Tab 1	**SB 128** by **Rodriguez;** Similar to H 00113 Contacting Consumer Debtors

789210	D	S	RCS	BI, Rodriguez	Delete everything after	03/30 08:29 PM

Tab 2	**SB 180** by **Gruters;** Compare to CS/H 00253 Securities Transactions

491330	D	S	RCS	BI, Gruters	Delete everything after	03/31 08:27 AM

Tab 3	**SB 302** by **Grall;** Similar to CS/CS/H 00003 Government and Corporate Activism

659616	D	S	RCS	BI, Grall	Delete everything after	03/30 08:29 PM

Tab 4	**SB 312** by **Collins;** Compare to CS/H 01111 Insurance

705828	D	S	RCS	BI, Collins	Delete everything after	04/24 03:59 PM

Tab 5	**SB 580** by **Gruters;** Similar to CS/H 01267 Consumer Finance Loans

747392	A	S	RCS	BI, Gruters	Delete L.229 - 277:	03/30 08:39 PM

Tab 6	**CS/SB 600** by **JU, Martin;** Identical to CS/H 00491 Assignment for the Benefit of Creditors

Tab 7	**SB 940** by **Calatayud (CO-INTRODUCERS) Rodriguez;** Similar to CS/H 00897 Multiple-employer Welfare Arrangements

464912	A	S	RCS	BI, Calatayud	Delete L.33 - 95:	03/31 08:27 AM

Tab 8	**SB 1624** by **Brodeur;** Identical to H 01353 Commercial Financing Product Brokers and Providers

180480	D	S	RCS	BI, Brodeur	Delete everything after	03/30 08:34 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Boyd, Chair
Senator DiCeglie, Vice Chair

MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Boyd, Chair; Senator DiCeglie, Vice Chair; Senators Broxson, Burgess, Burton, Hutson, Ingoglia, Mayfield, Powell, Thompson, Torres, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 128** Rodriguez (Similar H 113)	Contacting Consumer Debtors; Specifying that persons who violate specified provisions of law are subject to sanctions in the same manner as any other consumer debt collector; prohibiting creditors from contacting debtors regarding specified types of debt under certain circumstances; requiring the Office of Financial Regulation of the Financial Services Commission to inform and furnish relevant information to the appropriate regulatory body of the state, the Federal Government, or The Florida Bar if a person has been named in a certain consumer complaint alleging specified violations of law; authorizing debtors to bring civil actions against creditors who violate the act, etc. BI 03/29/2023 Fav/CS AEG FP	Fav/CS Yeas 11 Nays 0
2	**SB 180** Gruters (Compare CS/H 253)	Securities Transactions; Requiring the Financial Services Commission to define the term “accredited investor”; exempting the offer and sale of an issuer’s own securities from registration requirements if certain conditions are met; requiring such issuers to file certain information with the Office of Financial Regulation within a certain timeframe; authorizing issuers or their authorized persons to communicate with prospective investors to determine their interest in a contemplated security offering; deleting a limit on, and the commission’s rulemaking authority to fix, maximum compensation in connection with the sale or offering of securities; revising prohibited acts of dealers and associated persons without required registration; specifying continuing education requirements for associated persons of investment advisers and federal covered advisers, etc. BI 03/29/2023 Fav/CS AEG FP	Fav/CS Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 302** Grall (Similar CS/CS/H 3)	Government and Corporate Activism; Requiring that investment decisions comply with a specified requirement related to the consideration of pecuniary factors; requiring the Department of Management Services to report certain noncompliance to the Attorney General; requiring that certain noncompliance be reported to the Attorney General, who is authorized to bring certain civil or administrative actions; prohibiting bond issuers from issuing environmental, social, and governance bonds and taking other related actions; prohibiting an awarding body from requesting certain documentation or giving preference to vendors based on their social, political, or ideological interests, etc. BI 03/29/2023 Fav/CS FP	Fav/CS Yeas 8 Nays 3
4	**SB 312** Collins (Compare CS/H 1111)	Insurance; Revising restrictions on the use of genetic information for insurance purposes by life insurers and long-term care insurers; specifying a restriction on and an authorized use of genetic information for insurance purposes by disability income insurers; providing that certain restrictions against unfair discrimination or unlawful rebates do not include value-added products or services offered or provided by insurers or their agents if certain conditions are met; providing requirements for and restrictions on insurers or agents offering or providing such products or services, etc. BI 03/29/2023 Fav/CS JU RC	Fav/CS Yeas 11 Nays 0
5	**SB 580** Gruters (Similar CS/H 1267)	Consumer Finance Loans; Prohibiting a person from operating a branch of a business making consumer finance loans before obtaining a license from the Office of Financial Regulation; revising the maximum interest rate and the calculation of interest rates on consumer finance loans; requiring licensees offering an assistance program to borrowers after a federally declared major disaster to send a specified notice to the office within a certain timeframe; requiring certain licensees to suspend specified actions for a certain timeframe after a federally declared disaster, etc. BI 03/29/2023 Fav/CS AEG FP	Fav/CS Yeas 8 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 600** Judiciary / Martin (Identical CS/H 491)	Assignment for the Benefit of Creditors; Revising requirements for the commencement of proceedings for general assignments; authorizing assignees to rely on certain orders, judgments, decrees, rules, and documents; limiting the assets a creditor or other party in interest may pursue in an action against an assignee; providing requirements for a creditor or other party in interest in certain actions against an assignee, etc. JU 03/21/2023 Fav/CS BI 03/29/2023 Favorable RC	Favorable Yeas 12 Nays 0
7	**SB 940** Calatayud (Similar CS/H 897)	Multiple-employer Welfare Arrangements; Revising eligibility requirements for a bona fide group to qualify as a multiple-employer welfare arrangement, etc. BI 03/29/2023 Fav/CS CM RC	Fav/CS Yeas 11 Nays 0
8	**SB 1624** Brodeur (Identical H 1353)	Commercial Financing Product Brokers and Providers; Citing this act as the "Florida Commercial Financing Disclosure Law"; providing requirements for disclosure of certain information by commercial financing product providers under certain circumstances; providing prohibited acts by commercial financing product providers; providing exclusive authority of the Attorney General to enforce specified provisions, etc. BI 03/29/2023 Fav/CS ACJ FP	Fav/CS Yeas 12 Nays 0
	Discussion of Insurer Accountability		Presented
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 128
INTRODUCER:	Senate Committee on Banking and Insurance and Senator Rodriguez
SUBJECT:	Contacting Consumer Debtors
DATE:	March 29, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	**Fav/CS**
2.			AEG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

- CS/SB 128 creates s. 559.721, F.S., to prohibit consumer collection agencies from contacting for the purpose of collecting a debt: Victims of human trafficking and economic abuse; and
- A debtor whose debt arose when the debtor was in foster care.

The bill's prohibition on consumer debt collection requires victims of human trafficking to provide copies of official documentation to creditors as proof that they are a crime victim. Such victims and a debtor whose debt arose when he or she was in foster care also must provide the creditor with an affidavit confirming certain information regarding the debt and how it was incurred.

Victims of human trafficking who comply with these requirements may not be contacted by creditors for one year from the date the affidavit is provided or indefinitely if the perpetrator of the crime has been convicted of the reported offense.

The Office of Financial Regulation (OFR) is required to report certain information regarding consumer complaints of an alleged violation of the new section to the appropriate regulatory body, the Federal Government, or The Florida Bar.

The bill is effective July 1, 2023.

II. Present Situation:

Debt Collection Laws

Federal Fair Debt Collection Practices Act (the FDCPA)

The FDCPA was established as a result of abusive, deceptive, and unfair debt collection practices.[1] The FDCPA is aimed at eliminating abusive debt collection practices by debt collectors,[2] to ensure those that do not engage in abusive practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.[3,4]

A debt collector who is attempting to acquire location information of the consumer must comply with certain requirements, such as identify himself, state that he is confirming or correcting location information, and identify his employer only if expressly asked.[5] With limited exceptions, the FDCPA limits circumstances under which a debt collector may communicate with a consumer[6] with respect to collecting any debt,[7,8] and restricts the individuals with whom a debt collector may communicate about any debt.[9] If a consumer notifies a debt collector in writing that he or she refuses to pay a debt or wishes to cease communication, the debt collector must not communicate with the consumer except to notify the consumer of specified information.[10] Except if the information is relayed during initial communications or the consumer paid the debt, within five days after the initial communication with a consumer a debt collector must provide the consumer with a written notice containing information related to the debt.[11]

The FDCPA prohibits a debt collector from engaging in any conduct that results in harassment, oppression, or abuse of any person in collection of a debt, and specifies certain conduct which constitutes a violation of this provision.[12] A debt collector also is prohibited from using any

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[1] 15 U.S.C. s. 1692(a).
[2] 15 U.S.C. s. 1692a(6) defines "debt collector" as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding certain exclusions, the term included any creditor who, in the process of collecting his debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For purposes of s. 1692f(6), the term includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interest. The term excludes certain persons, such as any officer or employee of a creditor.
[3] 15 U.S.C. s. 1692a(3) defines "consumer" as any natural person obligated or allegedly obligated to pay any debt.
[4] 15 U.S.C. s. 1692(c).
[5] 15 U.S.C. s. 1692b(1).
[6] 15 U.S.C. s. 1692b(d) defines "consumer," for purposes of this section, to include the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.
[7] 15 U.S.C. s. 1692a(5) defines "debt" as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
[8] 15 U.S.C. s. 1692c(a) (for instance, providing the time or place in which the communication may take place, and prohibiting contact with the consumer who is represented by an attorney except for certain circumstances).
[9] 15 U.S.C. s. 1692c(b).
[10] 15 U.S.C. s. 1692c(c).
[11] 15 U.S.C. s. 1692g(a).
[12] 15 U.S.C. s. 1692d.

false, deceptive, or misleading representation or means in the collection of any debt, and the FDCPA specifies conduct which constitutes a violation of this provision.[13]

Any debt collector who violates these provisions is liable for actual damages, additional damages up to $1,000 as a court allows, or certain amounts for class action suits.[14] When determining liability, a court must consider, at a minimum, certain specified factors, such as the frequency and persistence of noncompliance by the debt collector and the nature of noncompliance.[15]

The Consumer Financial Protection Bureau (CFPB) must by regulation exempt from requirements of the FDCPA any class of debt collection practices within any state if the Bureau determines that the laws of such state are substantially similar to the provision of FDCPA and have adequate provisions of enforcement.[16]

Florida Consumer Collection Practices Act

The OFR is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and securities.[17] The OFR has three divisions, including a Division of Consumer Finance which is responsible for the administration and enforcement of ch. 559, F.S.,[18] known as the Florida Consumer Collection Practices Act (FCCPA). The OFR registers and regulates consumer collection agencies.[19,20] A person is prohibited from engaging in business as a consumer collection agency without registering with the OFR and must renew such registration annually.[21] The following persons or entities are not required to register with the OFR:

- An original creditor, that is any person who offers or extends credit creating a debt[22] or to whom a debt is owed, but does not include any person to the extent that they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another;[23]
- A member of The Florida Bar;

[13] 15 U.S.C. s. 1692e.
[14] 15 U.S.C. s. 1692k(a).
[15] 15 U.S.C. s. 1692k(b).
[16] 15 U.S.C. s. 1692*o*.
[17] Section 20.121(3)(a)2., F.S.
[18] Section 494.0011(1), F.S.
[19] Section 559.55(3), F.S., defines "consumer collection agency" as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted under s. 559.553(3), F.S. Section 559.55(7), F.S., defines "debt collector" as any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collection" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a person is collecting or attempting to collect such debts. The term does not include specified persons.
[20] Section 559.554(1), F.S.
[21] Section 559.553(1) and (2), F.S.
[22] Section 559.55(7), F.S., defines "debt" or "consumer debt" as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
[23] Section 559.55(5), F.S.

- A financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate;
- A licensed real estate broker;
- An insurance real estate broker;
- An insurance company authorized to do business in this state;
- A consumer finance company and any wholly owned subsidiary and affiliate;
- A person licensed to pursuant to ch. 520, F.S.;
- Certain out-of-state consumer debt collectors;[24] and
- An FDIC-insured institution or subsidiary or affiliate.[25]

An out-of-state consumer debt collector who is not exempt and who fails to register is subject to an enforcement action by the state.[26]

A person collecting consumer debts is prohibited from engaging in certain conduct, such as to:
- Simulate a law enforcement officer or a representative of any governmental agency;
- Use or threaten force or violence;
- Tell a debtor who disputes a consumer debt that the person will disclose to another information affecting the debtor's reputation for credit worthiness without also informing the debtor of certain information;
- Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless certain circumstances exist;
- Use profane, obscene, vulgar, or willfully abuse language in communicating with the debtor or any of the debtor's family members; and
- Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate.[27]

A debtor[28] may bring a civil action against a person who violated any of the specified prohibited acts.[29] Further a person who engages in any of the prohibited acts is liable for actual damages and for additional statutory damages as the court may allow, but not exceeding $1,000 plus court costs and reasonable attorney fees.[30] A court may order additional statutory damages for class action suits, punitive damages, or other equitable relief as it deems necessary or proper.[31] The court must consider the nature of the defendant's noncompliance, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional.[32] A person may not be held liable if the person shows by a preponderance of the evidence that the violation

[24] Section 559.55(11), F.S., defines "out-of-state consumer debt collector" as any person whose business activities in Florida involve both collecting or attempting to collect consumer debt from debtors located in Florida by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in Florida. For purposes of this subsection, a creditor has a business presence in Florida if either the creditor or an affiliate or subsidiary of the creditor has an office in Florida.
[25] Section 559.553(6), F.S.
[26] Section 559.553(4), F.S. An out-of-state consumer debt collector who is the subject of an enforcement action is liable up to $10,000, reasonable attorney fees, and court costs. Section 559.565(1), F.S.
[27] Section 559.72, F.S.
[28] Section 559.55(8), F.S., defines "debtor" or "consumer" as any natural person obligated or allegedly obligated to pay any debt.
[29] Section 559.77(1), F.S.
[30] Section 559.77(2), F.S.
[31] *Id.*
[32] *Id.*

was not intentional and resulted from a bona fide error.[33] Any suit brought under s. 559.77(4), F.S., must commence within 2 years after the date of the alleged violation.[34]

A person who is registered or required to be registered in Florida as a consumer collection agency is subject to disciplinary action for engaging in specified acts, such as fraud, misrepresentation, concealment, or dishonest dealing by trick.[35] Potential penalties include, for instance, issuance of a reprimand, suspension of registration, revocation of a registration, denial of a registration, imposition of a fine of up to $10,000 for each count or separate offense, and an administrative fine of up to $1,000 per day for each day that a person engages as a consumer collection agency without a valid registration.[36]

The OFR is responsible for receiving and maintaining records of complaints from consumers concerning all persons who collect debts, including consumer collection agencies.[37] The OFR must inform and furnish any relevant information to the appropriate regulatory body of Florida, the federal government, or The Florida Bar, if a person has been named in a consumer complaint alleging a violation of s. 559.72, F.S.[38]

Human Trafficking

Human trafficking is a form of modern-day slavery.[39] Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.[40] Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.[41] Any ~~minor~~ person who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.[42] Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.[43] The average ages of youth who are trafficked are 11-13 years old.[44]

Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers, preventing

[33] Section 559.77(3), F.S.
[34] Section 559.77(4).
[35] Section 559.730(1), F.S.
[36] Section 559.730(2), F.S.
[37] Section 559.725(1), F.S.
[38] Section 559.772(2), F.S.
[39] Section 787.06(1)(a), F.S.
[40] *Id.*
[41] The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml (last visited Mar. 25, 2023) (hereinafter cited as "DOE Human Trafficking").
[42] *Id.*
[43] *Id.*
[44] The DOE, Presentation to the State Board of Education, *Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf (last visited Mar. 25, 2023).

trafficking, and protecting victims.[45] The Act contains severe penalties and mandates restitution for victims of human trafficking.[46]

The U.S. Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.[47] Approximately 24.9 million people are human trafficking victims in the world.[48] There are approximately 2.5 million victims of human trafficking in the United States.[49] Since 2007, the U.S. National Human Trafficking Hotline (NHTH) has identified 82,301 cases of human trafficking with 164,839 victims being identified in the cases.[50]

Federal Regulation

The Code of Federal Regulation prohibits the inclusion of adverse information in consumer reporting in cases of human trafficking victims.[51] The regulation prohibits consumer reporting agencies from furnishing any consumer report that contains adverse information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking if certain specified documents is provided to the consumer reporting agency.[52] Examples of acceptable documentation include a determination made by a court of competent jurisdiction or a signed statement by the consumer attesting that the consumer is a victim of trafficking if the document is certified by specified certain entities (e.g. federal or state entity).[53]

[45] Pub. L. No. 106-386 (2000).
[46] *Id*.
[47] DOE Human Trafficking.
[48] National Human Trafficking Hotline, *What is Human Trafficking?*, available at https://humantraffickinghotline.org/what-human-trafficking (last visited Mar. 25, 2023).
[49] DOE Human Trafficking.
[50] NHTH, *Hotline Statistics*, available at https://humantraffickinghotline.org/states (last visited Mar. 25, 2023).
[51] 12 C.F.R. s. 1022.142
[52] 12 C.F.R. s. 1022.142(c).
[53] 12 C.F.R. s. 1022.142(b)(6).

Human Trafficking in Florida

Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,[54] purchasing, patronizing, procuring, or obtaining[55] another person for the purpose of exploitation of that person.[56] In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.[57] Florida law sets out several circumstances which give rise to human trafficking and specified penalties including, in part:

- Labor[58] or services[59] of any child under the age of 18 or adult believed to be a child younger than 18 years old commits a first degree felony;[60]
- Labor or services of any child under the age of 18 or adult believed to be a child younger than 18 years old who is an unauthorized alien[61] commits a first degree felony;[62]
- Labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed to be a child younger than 18 years old from outside of Florida to within Florida commits a first degree felony;[63]
- Commercial sexual activity[64] who does so by the transfer or transport of any child under the age of 18 or an adult believed to be a child younger than 18 years old from outside of Florida to within Florida commits a first degree felony;[65] or

[54] Section 787.06(2)(f), F.S., provides "maintain" means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines "services" as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.
[55] Section 787.06(2)(g), F.S., provides "obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof.
[56] Section 787.06(2)(d), F.S.
[57] Section 787.06(3), F.S.
[58] Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.
[59] Section 787.06(2)(h), F.S., provides "services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.
[60] Section 787.06(3)(a)1., F.S.
[61] Section 787.06(2)(j), F.S., defines "unauthorized alien" as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).
[62] Section 787.06(3)(c)1., F.S.
[63] Section 787.06(3)(e)1., F.S.
[64] Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.
[65] Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

- Commercial sexual activity[66] in which any child under the age of 18 or an adult believed to be a child younger than 18 years old, or in which any person who is mentally defective[67] or mentally incapacitated[68] is involved commits a life felony.[69]

First degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.[70] Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.[71]

Foster Care

The child welfare system identifies families whose children[72] are in danger of suffering or have suffered abuse,[73] abandonment,[74] or neglect[75] and works with those families to address the problems that are endangering children. If the problems cannot be ameliorated, the child welfare system finds other caregivers for children, such as foster care, relative and nonrelative caregivers, or adoptive families.[76] "Foster care" is defined as care provided a child in a foster

[66] Section 787.06(2)(b), F.S., defines "commercial sexual activity" as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines "sexual explicit performance" as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.
[67] Section 794.011(1)(b), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.
[68] Section 794.011(1)(c), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.
[69] A life felony is punishable by a term of life imprisonment, $15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.
[70] Section 787.06(8)(b), F.S.
[71] Section 787.06(9), F.S.
[72] *See* s. 39.01(14), F.S., for the definition of "child who is found to be dependent."
[73] Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.
[74] Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.
[75] Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.
[76] *See* s. 39.001(1), F.S.

family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.[77]

Action Letters for Foster Children

In 2014, the CFPB released action letters for child welfare case workers to send to credit bureaus for debt incurred by foster children.[78] The three letters address credit reports that: (a) should not exist for the child in foster care,[79] (b) has errors from before the youth turned 18,[80] and (c) has errors for foster care youth over 18.[81] Case workers are encouraged to send the relevant letters to the credit bureaus if they find errors on foster children's credit reports.[82]

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 559.721, F.S., which prohibits consumer collection agencies from contacting certain debtors once the consumer collection agency receives specified evidence. A creditor may not contact a debtor regarding a debt that arises from documented human trafficking and economic abuse or a debt that arose when the debtor was in foster care.

For the no contact provision to apply to victims of human trafficking and economic abuse, the debtor must provide to the creditor: (a) official documentation[83] that shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim and in which the debtor received relocation assistance,[84] and (b) a signed affidavit swearing under penalty of perjury that the following are true:

- The debtor was the victim of human trafficking as documented in a police report or there has been a determination that the debtor should receive relocation assistance;
- As a result of the human trafficking, the debtor was compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, such as the debtor's identity being stolen; and
- The debt was incurred solely because of and during the period of human trafficking.

[77] Section 39.01(29), F.S.
[78] The CFPB, *CFPB Releases Tools to Protect Foster Care Children from Credit Reporting Problems*, May 1, 2014, available at: CFPB Releases Tools To Protect Foster Care Children From Credit Reporting Problems | Consumer Financial Protection Bureau (consumerfinance.gov) (hereinafter cited as "CFPB Tools to Protect Foster Care Children") (last visited Mar. 25, 2023).
[79] The CFPB, *Credit Report Dispute Template for Youth in Foster Care*, available at: 201405_cfpb_foster-youth-letter_minor-dispute.doc (live.com) (last visited Mar. 25, 2023).
[80] The CFPB, *Credit Report Dispute Template for Youth 18 or Older in Foster Care – Activity Occurred When Minor*, available at: 201405_cfpb_foster-youth-letter_adult-minor-dispute.doc (live.com) (last visited Mar. 25, 2023).
[81] The CFPB, *Credit Report Dispute Template for Youth 18 or Older in Foster Care*, available at: 201405_cfpb_foster-youth-letter_adult-dispute.doc (live.com) (last visited Mar. 25, 2023).
[82] The CFPB Tools to Protect Foster Care Children.
[83] Section 943.0583(1)(b), F.S., defines "official documentation" as any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking.
[84] Section 960.196(2), F.S., provides that a victim may be granted an award for relocation assistance if there is proof that a human trafficking offense was committed as provided in s. 787.06(3)(b), (d), (f), and (g), and that the crime was reported to the proper authorities and filed within specified timeframes depending on when the crime occurred.

If the debtor complies with these requirements, the no contact provision applies either (a) for 1 year after the affidavit is provided, or (b) indefinitely, if the perpetrator has been convicted of a crime relating to human trafficking as alleged in the police report.

For the no contact provision to apply to children who were in foster care, the debtor must provide to the creditor a signed affidavit, swearing under penalty of perjury, that the following are true:

- The debtor was in foster care; and
- The debt was incurred during the time when the debtor was in foster care.
- If the debtor complies with these requirements, there is no time limit for how long the provision applies.

Section 2 requires the OFR to inform and furnish relevant information to specified entities if a person has been named in a consumer complaint alleging a violation of s. 559.721, F.S.

Section 3 provides the bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Federal law and Florida law provide that, in the event any inconsistency between any provision of FDCPA and the FCCPA, the provision which is more protective of the consumer or debtor must prevail.[85] The bill would add provisions that are more protective of certain categories of persons and therefore should prevail.

[85] 15 U.S.C. s. 1692n; Section 559.552, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section559.725of the Florida Statutes.
This bill creates section 559.721 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on March 29, 2023:
The committee substitute makes the following changes:

- Removes the provisions that prohibit a creditor from contacting:
  - A victim of elder and economic abuse;
  - A victim of identity theft; and
  - A debtor upon receiving notice that the debtor is protected by an injunction for protection against exploitation of a vulnerable adult under s. 825.1035, F.S.;
- Modifies the provisions that prohibit a "creditor" to prohibit a "consumer collection agency" from making contact with specified groups of individuals;
- Removes the provision that s. 559.721, F.S., applies to out-of-state consumer debt collectors, even if they are exempted from registering with the OFR;
- Removes the provision that such section may not be construed to mean that the debtor is discharged from the debt that he or she may have incurred as a result of the crime; and

- Removes the modification to s. 559.77, F.S., in the bill that makes a creditor who violates the provisions prohibiting contact with the specified categories of persons subject to civil remedies.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

789210

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2023	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 559.721, Florida Statutes, is created to read:

559.721 Prohibitions on contacting debtors who are victims of certain crimes.—In collecting consumer debts, a consumer collection agency may not:

(1) Contact a debtor regarding a debt that arises from

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documented human trafficking and economic abuse.

(a) Documented human trafficking and economic abuse occur when:

1. Official documentation as defined in s. 943.0583 shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim or in which the debtor received relocation assistance under s. 960.196; and

2. The debtor provides the consumer collection agency with a signed affidavit, swearing under penalty of perjury that the following are true:

a. The debtor was the victim of human trafficking as documented in a police report, or there has been a determination that the debtor should receive relocation assistance under s. 960.196;

b. As a result of human trafficking, the debtor was compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, including instances in which the debtor’s identity has been stolen; and

c. The debt that is the subject of the consumer collection agency contact with the debtor was incurred solely because of and during the period of human trafficking.

(b) The prohibition in this subsection applies:

1. For 1 year after the affidavit under subparagraph (a)2. is provided to the consumer collection agency; or

2. Indefinitely, if the perpetrator has been convicted of a crime relating to human trafficking as alleged in the police report.

(2) Contact a debtor regarding debts that arose when the

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debtor was in foster care. This prohibition applies after the debtor provides the consumer collection agency with a signed affidavit, swearing under penalty of perjury that the following are true:

(a) The debtor was in foster care as defined in s. 39.01; and

(b) The debt that is the subject of the consumer collection agency contact with the debtor was incurred during the time when the debtor was in foster care.

Section 2. Subsection (2) of section 559.725, Florida Statutes, is amended to read:

559.725 Consumer complaints; administrative duties.—

(2) The office shall inform and furnish relevant information to the appropriate regulatory body of the state or the Federal Government, or The Florida Bar in the case of attorneys, if a person has been named in a consumer complaint pursuant to subsection (3) alleging violations of s. 559.72 or s. 559.721. The Attorney General may take action against any person in violation of this part.

Section 3. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to contacting consumer debtors; creating s. 559.721, F.S.; prohibiting creditors from contacting debtors regarding specified types of debt

789210

under certain circumstances, to conform to federal regulations; amending s. 559.725, F.S.; requiring the Office of Financial Regulation of the Financial Services Commission to inform and furnish relevant information to the appropriate regulatory body of the state, the Federal Government, or The Florida Bar if a person has been named in a certain consumer complaint alleging specified violations of law; providing an effective date.

By Senator Rodriguez

40-00123A-23 2023128__

A bill to be entitled

An act relating to contacting consumer debtors; amending s. 559.565, F.S.; specifying that persons who violate specified provisions of law are subject to sanctions in the same manner as any other consumer debt collector; creating s. 559.721, F.S.; defining the term "creditor"; prohibiting creditors from contacting debtors regarding specified types of debt under certain circumstances; providing applicability; providing construction; amending s. 559.725, F.S.; requiring the Office of Financial Regulation of the Financial Services Commission to inform and furnish relevant information to the appropriate regulatory body of the state, the Federal Government, or The Florida Bar if a person has been named in a certain consumer complaint alleging specified violations of law; amending s. 559.77, F.S.; authorizing debtors to bring civil actions against creditors who violate the act; specifying that violators are liable for specified damages, costs, and fees; providing an effective date.

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

Section 1. Subsection (2) of section 559.565, Florida Statutes, is amended to read:

559.565 Enforcement action against out-of-state consumer debt collector.—The remedies of this section are cumulative to other sanctions and enforcement provisions of this part for any

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

40-00123A-23 2023128__

violation by an out-of-state consumer debt collector, as defined in s. 559.55(11).

(2) A person, whether or not exempt from registration under this part, who violates s. 559.72 or s. 559.721 is subject to sanctions the same as any other consumer debt collector, including imposition of an administrative fine. The registration of a duly registered out-of-state consumer debt collector is subject to revocation or suspension in the same manner as the registration of any other registrant under this part.

Section 2. Section 559.721, Florida Statutes, is created to read:

559.721 Prohibitions on contacting debtors who are victims of certain crimes.—

(1) As used in this section, the term "creditor" means a person required to be registered under s. 559.553.

(2) In collecting consumer debts, a creditor may not:

(a) Contact a debtor regarding a debt that arises from documented elder and economic abuse.

1. Documented elder and economic abuse occurs when:

a. The debtor, or a person with fiduciary responsibility to the debtor, has alleged in a police report that the debtor has been the victim of elder abuse by a specified alleged perpetrator; and

b. The debtor, or a person with fiduciary responsibility to the debtor, provides the creditor with a signed affidavit, swearing under penalty of perjury that the following are true:

(I) The debtor was the victim of elder abuse as documented in a police report;

(II) As a result of the alleged abuse, the debtor was

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, including, but not limited to, the debtor's identity being stolen; and

(III) The debt that is the subject of the creditor's contact with the debtor was incurred solely because of elder abuse.

2. The prohibition in this paragraph applies:

a. For 2 years after the affidavit under sub-subparagraph 1.b. is provided to the creditor; or

b. Indefinitely, if the perpetrator has been convicted of a crime relating to elder abuse arising from the conduct referenced in the police report.

(b) Contact a debtor regarding a debt that arises from documented human trafficking and economic abuse.

1. Documented human trafficking and economic abuse occur when:

a. Official documentation as defined in s. 943.0583 shows at least one incident of human trafficking has occurred in which the debtor is listed as a victim or in which the debtor received relocation assistance under s. 960.196; and

b. The debtor provides the creditor with a signed affidavit, swearing under penalty of perjury that the following are true:

(I) The debtor was the victim of human trafficking as documented in a police report or there has been a determination that the debtor should receive relocation assistance under s. 960.196;

(II) As a result of human trafficking, the debtor was

compelled to incur debt or was provided credit that the debtor would not otherwise have incurred in the absence of the abuse, including instances in which the debtor's identity has been stolen; and

(III) The debt that is the subject of the creditor's contact with the debtor was incurred solely because of and during the period of human trafficking.

2. The prohibition in this paragraph applies:

a. For 2 years after the affidavit under sub-subparagraph 1.b. is provided to the creditor; or

b. Indefinitely, if the perpetrator has been convicted of a crime relating to human trafficking as alleged in the police report.

(c) Contact a debtor regarding debts that arise from documented identity theft. Documented identity theft occurs when:

1. The debtor provides the creditor with a Federal Trade Commission identity theft report stating that he or she is the victim of identity theft; and

2. The debtor provides the creditor with a signed affidavit, swearing that the following are true:

a. The debtor was the victim of identity theft as documented in a Federal Trade Commission identity theft report;

b. As a result of identity theft, the debt was incurred in the debtor's name but in no way benefited the debtor; and

c. The debt that is the subject of the creditor's contact with the debtor was incurred solely because of identity theft.

(d) Contact a debtor upon receiving notice that the debtor is protected by an injunction for protection against

exploitation of a vulnerable adult under s. 825.1035.

(e) Contact a debtor regarding debts that arose when the debtor was in foster care. This prohibition applies after the debtor provides the creditor with a signed affidavit, swearing under penalty of perjury that the following are true:

1. The debtor was in foster care as defined in s. 39.01; and

2. The debt that is the subject of the creditor's contact with the debtor was incurred during the time when the debtor was in foster care.

(3) This section may not be construed or interpreted in any manner to discharge an individual from a debt he or she may have incurred as a result of a crime.

Section 3. Subsection (2) of section 559.725, Florida Statutes, is amended to read:

559.725 Consumer complaints; administrative duties.—

(2) The office shall inform and furnish relevant information to the appropriate regulatory body of the state or the Federal Government, or The Florida Bar in the case of attorneys, if a person has been named in a consumer complaint pursuant to subsection (3) alleging violations of s. 559.72 or s. 559.721. The Attorney General may take action against any person in violation of this part.

Section 4. Subsections (1) and (2) of section 559.77, Florida Statutes, are amended to read:

559.77 Civil remedies.—

(1) A debtor may bring a civil action against a person violating ~~the provisions of~~ s. 559.72 or s. 559.721 in the county in which the alleged violator resides or has his or her

principal place of business or in the county where the alleged violation occurred.

(2) Any person who fails to comply with any provision of s. 559.72 or s. 559.721 is liable for actual damages and for additional statutory damages as the court may allow, but not exceeding $1,000, together with court costs and reasonable attorney ~~attorney's~~ fees incurred by the plaintiff. In determining the defendant's liability for any additional statutory damages, the court shall consider the nature of the defendant's noncompliance with s. 559.72 or s. 559.721, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional. In a class action lawsuit brought under this section, the court may award additional statutory damages of up to $1,000 for each named plaintiff and an aggregate award of additional statutory damages up to the lesser of $500,000 or 1 percent of the defendant's net worth for all remaining class members; however, the aggregate award may not provide an individual class member with additional statutory damages in excess of $1,000. The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part. If the court finds that the suit fails to raise a justiciable issue of law or fact, the plaintiff is liable for court costs and reasonable attorney ~~attorney's~~ fees incurred by the defendant.

Section 5. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/2023
Meeting Date

Banking and Insurance
Committee

128
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris Moya

Phone 850-910-4100

Address 106 E College Ave Suite 1200
Street

Email cmoya@deanmead.com

Tallahassee | FL | 32301
City | *State* | *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Lexington Law

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29
Meeting Date

Banking & Insurance
Committee

128
Bill Number or Topic

Amendment Barcode (if applicable)

Name Austin Stowers

Phone 850. 413.5939

Address PL-11, The Capitol
Street

Email Austin.Stowers@myfloridacfo.com

Tallahassee FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
CFO Jimmy Patronis

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 128
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 2 Delete-all Amendment 789210 Rodriguez			
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
X		Ingoglia						
X		Mayfield						
X		Powell						
X		Thompson						
X		Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
11	0	**TOTALS**	FAV	-	RCS	-		
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 180
INTRODUCER:	Banking and Insurance Committee and Senator Gruters
SUBJECT:	Securities Transactions
DATE:	March 29, 2023
REVISED:	04/11/23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.			AEG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 180 revises provisions of ch. 517, F.S., the Securities and Investor Protection Act, which regulates securities transactions. 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 associated with these firms in accordance with the act. The Division of Securities within the OFR is responsible for administering the act.

The bill provides many technical, clarifying, and conforming changes to ch. 517, F.S. Many provisions of ch. 517, F.S., are outdated or do not incorporate recent model acts or federal rule changes, which are designed to promote capital formation for small businesses and provide more investment opportunities for investors.

The bill decreases the $1,000 filing fee to $200 for offerings that do not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933. The maximum amount currently provided in s. 3(b) of the Securities Act of 1933 is $5 million.

The bill eliminates the requirement for an issuer to register with the OFR. Currently, issuers are required to disclose all material facts about themselves when registering an offering of securities.

The bill incorporates provisions of the following model acts and rules:

- The North American Securities Administrators Association's (NASAA's) Model Rule to Require Continuing Education by Investment Adviser Representatives. An associate or representative would be required to complete 12 hours of continuing educations.
- The Uniform Securities Act of the Uniform Law Commission.

The bill adds failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.

There is no anticipated fiscal impact on state or local governments.

The bill takes effect October 1, 2023.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

Following the stock market crash of 1929, the Securities Act of 1933[1] was enacted to regulate the offers and sales of securities. The Securities Act requires issuers to disclose financial and other significant information on securities offered for public sale and prohibits deceit, misrepresentations, and other kinds of fraud in the sale of securities. The act requires issuers to disclose information deemed germane to investors as part of the mandatory SEC registration of the securities that those companies offer for sale to the public.[2] For example, potential investors must be given an offering prospectus containing registration data. Registered securities offerings, often called public offerings, are available to all types of investors and have more rigorous disclosure requirements.

By contrast, securities offerings that are exempt from SEC registration are referred to as private offerings and are mainly available to more sophisticated investors. The SEC exempts certain small offerings from registration requirements to foster capital formation by lowering the cost of offering securities to the public. Examples of exempt offerings[3] include:

- Rule 506(b) Private Placement Offerings allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials.[4]
- Rule 506(c) General Solicitation Offerings allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials.[5]

[1] Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.
[2] *Id.*
[3] SEC.gov | The Laws That Govern the Securities Industry (last visited March 5, 2023). Security offerings of municipal, state, and the federal government are exempt from registration.
[4] 17 C.F.R. s. 230.506(b).
[5] 17 C.F.R. s. 230.506(c).

- Rule 504 Limited Offerings allow companies to raise up to $10 million in a 12-month period, in many cases from investors with whom the company has a relationship.[6]
- Regulation Crowdfunding Offerings allow eligible companies to raise up to $5 million in investment capital in a 12-month period from investors via an online portal.[7]
- Intrastate offerings[8] allow companies to raise capital within a single state according to state law. Many states limit the offering to between $1 million and $5 million in a 12-month period.
- Regulation A Offerings allow eligible companies to raise up to $20 million in a 12-month period in a Tier I offering and up to $75 million through a similar, but less extensive registered offering.[9]

Securities and Exchange Act of 1934

The Securities and Exchange Act of 1934 created the Securities and Exchange Commission (SEC) as an independent agency to enforce federal securities laws.[10] The SEC oversees federal securities laws[11] broadly aimed at (1) protecting investors; (2) maintaining fair, orderly, and efficient markets; and (3) facilitating capital formation.[12] The SEC has broad regulatory authority over significant parts of the securities industry, including stock exchanges, mutual funds, investment advisers, brokerage firms, as well as securities self-regulatory organizations (SROs).

Besides regulating market participants, the SEC plays an important role in the regulation of other regulatory bodies, such as the Financial Industry Regulatory Authority, Inc. (FINRA), which is a SRO[13] registered with SEC as a national securities association, the Municipal Securities Rulemaking Board (MSRB), the Securities Investor Protection Corporation, the Public Company Accounting Oversight Board, and the Financial Accounting Standards Board. With regard to broader marketplace regulation, the SEC coordinates with the Commodity Futures Trading Commission (CFTC), a separate federal financial regulator overseeing derivatives and commodities markets, regarding issues involving securities-based derivatives.[14]

Florida Regulation of Securities

The federal securities acts expressly allow for concurrent state regulation under blue sky laws,[15] which are designed to protect investors against fraudulent sales practices and activities. Most

[6] 17 C.F.R. s. 230.504.
[7] 17 C.F.R. s. 227.100. Florida's intrastate crowdfunding law, s. 517.0611, F.S., has not been updated since it was created to reflect to reflect the increase in the maximum offering from $1 million to $5 million.
[8] 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A
[9] 17 C.F.R. s. 230.251, *et seq.*
[10] Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.
[11] Section 15, Securities and Exchange Act of 1934.
[12] Securities and Exchange Commission, "What We Do," at SEC.gov | What We Do (last visited March 5, 2023).
[13] National securities exchanges (e.g., the New York Stock Exchange) and clearing and settlement systems may register as SROs with the SEC or CFTC, making them subject to SEC or CFTC oversight. A list of self-regulatory organizations (SROs) registered with the SEC can be found at https://www.sec.gov/rules/sro.shtml.
[14] CFTC, "The Commission," https://www.cftc.gov/About/AboutTheCommission (last visited Mar. 1, 2023).
[15] The term "blue sky" derives from the characterization of baseless and broad speculative investment schemes, which such laws targeted. Cornell Law School, Blue Sky Laws

state laws typically require companies making offerings of securities to register their offerings before they can be sold in a particular state, unless a specific state exemption is available. The laws also license brokerage firms, their brokers, and investment adviser representatives.[16]

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 associated with these firms in accordance with the act.[17] The Division of Securities within the OFR is responsible for administering the Securities and Investor Protection Act.[18]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[19] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in s. 517.051 or s. 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).

As of December 31, 2022, the Division had total registrants in the following categories:
- Dealers: 2,421
- Investment Advisers: 8,096
- Branches: 11,435
- Associated Persons: 361,200[20]

Model Acts and Model Rules

Uniform Securities Act[21]

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan uniform model acts. In 2002, the Uniform Law Commission updated the Uniform Securities Act, which provides basic investor protection from securities fraud, complementing the federal Securities and Exchange Act, and only applies to securities not regulated by the SEC.

Model Rule to Require Continuing Education by Investment Adviser Representatives

https://www.law.cornell.edu/wex/blue_sky_law#:~:text=In%20the%20early%201900s%2C%20decades,schemes%20which%20such%20laws%20targeted. (last visited Mar. 1, 2023).
[16] U.S. Securities and Exchange Commission, Blue Sky Laws, http://www.sec.gov/answers/bluesky.htm (last visited Mar. 1, 2023).
[17] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (commission), comprised of the Governor and Cabinet, serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[18] Chapter 517, F.S.
[19] Section 517.12, F.S.
[20] Office of Financial Regulation, Analysis of SB 180 (Jan. 25, 2023).
[21] Securities Act - Uniform Law Commission (uniformlaws.org) (last visited Mar. 10, 2023).

In 2020, the North American Securities Administrators Association (NASAA) approved the *Model Rule to Require Continuing Education by Investment Adviser Representatives.*[22] Twelve states have adopted the model.[23]

Chapter 517 Task Force of The Florida Bar Business Law Section

In 2022, the Business Law Section of The Florida Bar created the Chapter 517 Task Force. The Task Force will review and make legislative recommendations to ch. 517, F.S. In particular, the Task Force's mission is to review Florida's securities laws and to propose a revision with the purpose of bringing Chapter 517 in line with the Uniform Securities Act and address current issues presented by the existing statutes.

III. Effect of Proposed Changes:

Section 1. Definitions (s. 517.021, F.S.) The section revises the following definitions:

- The term "accredited investor" is currently defined each time it is used throughout ch. 517, F.S. The purpose of the change is to eliminate redundancy and maintain consistency. Subsection (1) directs the Financial Services Commission to define by rule the definition of "accredited investor" in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501.
- The term, "associated person," is clarified to define what "associated person" means as the term relates to a dealer or to an investment adviser.
- The term, "dealer," includes, unless otherwise specified, a 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 terms "guaranty" and "intermediary" are amended for clarity.

The term "investment adviser" is amended to have a parallel structure to the definition of "dealer" in this section.
Other terms in the section are amended to provide technical changes.

Section 2. Viatical Settlement Investments (s. 517.072, F.S.) This section is amended to transfer provisions previously in s. 517.081, F.S., relating to viatical settlements, and to provide technical changes.

Section 3. Registration Procedures (s. 517.081, F.S.) The following changes are made:

- Allows all issuers meeting certain criteria, not only corporations, to use a simplified offering circular to register securities.
- Decreases the filing fee to $200 for offerings which does not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933. The maximum amount currently provided in s. 3(b) of the Securities Act of 1933 is $5 million.

[22] Model Rule NASAA-IAR-CE-Model-Rule.pdf (Nov. 24, 2020) (last visited Mar. 2, 2023).
[23] Arkansas, Colorado, Kentucky, Maryland, Michigan, Mississippi, Oklahoma, Oregon, South Carolina, Vermont, Wisconsin, and the District of Columbia. IAR CE Map - NASAA (last visited Mar. 20, 2023).

- Authorizes the commission to specify by rule the time period for completing an application to register securities. If the application is not timely completed, the application shall be deemed abandoned.
- Provides conforming change to transfer provisions to 517.072, F.S., relating to viatical settlements.

Section 4. Registration by Notification; federal registration statements (s. 517.082)

- Authorizes the OFR to deem an application abandoned if an applicant's federal registration statement is not declared effective by the SEC within 180 days of the filing of such application for registration by notification with the OFR.

Section 5. Revocation or denial of registration of securities (s. 517.111, F.S.). This section is amended in the following manner:

- Removes "failure to timely complete an application" as grounds for denial as this provision is incorporated in the registration sections (ss. 517.081 and 517.082, F.S.).
- Replaces the term, "insolvency," with the definition. "The issuer cannot pay its debts as they become due in the usual course of business," for clarity.
- Includes "investigation" in addition to "examination" in various provisions as these provisions are applicable to both examinations and investigations conducted by the OFR.
- Includes limited liability companies and provides other technical, conforming changes.
- Removes the phrase "is in any other way dishonest or" because the standard is too vague.
- Eliminate the phrase "demonstrated any evidence of unworthiness," a vague standard, and replaces it with "has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1)," a clearer standard.
- Eliminates the ability of the OFR to notice the entry of an order pursuant to this section by "telephone confirmed in writing, or by telegraph to the issuer" as these methods are outdated and not used elsewhere in ch. 517, F.S.

Section 6. Registration of dealers, associated persons, intermediaries, and investment advisers (s. 517.12, F.S.) The section provides the following changes:

- Removes the requirement that issuers register with OFR. This registration requirement is not necessary because issuers are required to disclose all material facts about themselves when registering an offering of securities. Further, the majority of states do not have this requirement.
- Clarifies which exempt transactions the registration requirements apply to and to clarify the meaning of "securities business."
- Removes the term "small loan companies" as the term is not defined.
- Eliminates the requirement that the OFR find an applicant is of "good repute and character." This standard is not defined, and its meaning is unclear.
- Replaces the phrase "any person directly or indirectly controlling the applicant" with "control person."
- Amends the section to specifically include limited liability companies, and provides technical changes.

Section 7. Continuing education requirements for associated persons of investment advisers and federal covered advisers (Section 517.1214, F.S.) The newly created section creates the following provisions:

- Adopts NASAA's Model Rule on Investment Adviser Representative Continuing Education. Requires associated persons of investment advisers and federal covered advisers seeking registration or renewal of registration with the OFR to complete 12 continuing education (CE) credits each year. An associated person must complete at least six credits of continuing education content that address ethical and regulatory obligations and at least six credits of continuing education content that address product knowledge and industry practices. Associated persons of investment advisers and federal covered advisers who are also registered as associated persons of FINRA member dealers and who comply with FINRA's continuing education requirements are considered to be in compliance with the products and practices requirement. Further, credits of continuing education completed by an associated person who completes such credits as a condition of maintaining certain professional designations or associated persons in compliance with their home state's continuing education requirements may satisfy the continuing education requirements of this section.
- Provides that continuing education credits in excess of the required 12 cannot be carried forward. An associated person who fails to comply with this section by the end of each year will renew as "CE inactive" at the close of the calendar year in this state until the associated person completes and reports all required continuing education. An associated person who is CE inactive at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration.

Section 8. Rules of conduct and prohibited business practices for dealers and their associated persons (s. 517.1217) The section is revised to include intermediaries.

Section 9. Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person (s. 517.161, F.S.) The section provides the following:

- Replaces the phrase "person directly or indirectly controlling" with "control person" and removes the term "broker" for consistency.
- Removes the "unworthiness to transact business" and the "of bad business repute" standards because they are vague.
- Clarifies the meaning of "insolvent" as "unable to pay its debts as they become due in the usual course of business" and to remove the term "small loan companies" as it is undefined and its meaning is unclear.
- Adds failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.
- Amends section to include limited liability companies, and other entities.

Section 10. Escrow agreement (s. 517.181, F.S) This section is repealed as it is not utilized, and no federal counterpart exists. This section requires the securities to be delivered to the office in escrow for issuance contingent on a milestone being reached, such as receipt of a patent.

Section 11. Investigations; examinations; subpoenas; hearings; witnesses (s. 517.201, F.S.) This section is amended for clarity and to specifically include limited liability companies and other entities.

Section 12. Criminal Punishment Code; offense severity ranking chart (s. 921.0022, F.S.) This section is revised to provide technical changes.

Section 13. Requirements, rules of conduct, and prohibited business acts (s. 517.1215, F.S.) This section provides technical changes.

Section 14. Exempt transactions (s. 517.061, F.S.) The section provides technical, conforming changes.

Section 15. Intrastate crowdfunding (s. 517.0061, F.S.) This section provides technical, conforming changes.

Section 16. Cuba, prospectus disclosure of doing business with, required (s. 517.075, F.S.) This section provides technical, conforming changes.

Section 17. Securities Guaranty Fund (s. 517.131, F.S.) This section provides technical, conforming changes.

Section 18. Remedies available in cases of unlawful sales (s. 517.211, F.S.) This section provides technical, conforming changes.

Section 19. Fees (s. 517.315, F.S.) This section provides technical, conforming changes.

Section 20. Definitions (s. 626. 9911, F.S.) This section provides a technical, conforming changes.

Section 21. Bond of guardian (s. 744.351, F.S.) This section provide a technical, conforming change.

Section 22. Registration of associated persons specific as to a securities dealer, or federal covered adviser identified at time of registration approval (s. 517.1205, F.S.) The section is amended to revise legislative intent to provide that "while approval of an application requires a finding of compliance with the applicable registration provisions of this chapter and applicable rules, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law. The current provision requires a finding of the applicant's good repute and character. This standard is not defined and the meaning is unclear.

Section 23 provides the bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Many of the provisions in the bill are designed to promote capital formation for small businesses and opportunities for Florida investors.

An issuer filing an application to register securities is currently required to pay a filing fee of $1,000 per application. The bill maintains the $1,000 filing fee for offerings that exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended, which is $5 million, but reduces the fee to $200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

The bill eliminates the requirement for an issuer to register with the OFR. Currently, issuers are required to disclose all material facts about themselves when registering an offering of securities.

The bill allows all issuers meeting certain criteria, not only corporations, to use a simplified offering circular to register securities.

The bill requires associated persons of investment advisers to attain at least 12 continuing education credits each year to maintain their registration and will incur continuing education reporting fee of $3 per credit hour.[24]

C. Government Sector Impact:

There is a potential fiscal impact to OFR due to the revisions required to the REAL system to accommodate the changes required to implement the bill. The range of costs for changes, based on the IT impact is between $30,000 and $150,000 depending on

[24] IAR Continuing Education FAQ - NASAA (Oct. 8, 2021) (last visited Mar. 20, 2023).

which path is chosen. No additional appropriation will be required. Any changes up to the upper limit of the estimate can be absorbed within the OFR's existing budget.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 517.021, 517.061, 517.0611, 517.072, 517.081, 517.082, 517.111, 517.12, 517.1205, 517.1215, 517.1217, 517.161, 517.181, 517.201, 921.0022, 517.1215, 517.075, 517.131, 517.211, 517.315, 626.9911, and 744.351 of the Florida Statutes.

This bill creates section 517.1214 of the Florida Statutes.
This bill repeals section 517.181, of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 30, 2023:
The CS makes the following changes:

- Eliminates new definitions (angel investor group, business accelerator, business incubator, target offering amount, Tier I dealers, and Tier II dealers).
- Eliminates proposed changes relating to registration exemptions, exempt securities, and crowdfunding.
- Eliminates proposed new provisions relating to Tier I and Tier II dealers and preoffering communications.
- Removes the proposed changes to the definition of "control."
- Removes the proposed changes relating to control person liability and authorizing the Office of Financial Regulation to impose costs associated with an investigation in certain situations.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[25] OFR, Analysis of SB 180 (Jan. 25, 2023).

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2023	.	
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The Committee on Banking and Insurance (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 517.021, Florida Statutes, is reordered and amended to read:

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

(1) "Accredited investor" shall be defined by rule of the



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commission in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(3) ~~(2)~~ "Associated person" means:

(a)1. With respect to a dealer, a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting or attempting to effect purchases or sales of securities.

2. The term does not include the following:

a. A dealer.

b. A partner, an officer, or a director of a dealer or a person having a similar status or performing similar functions as a dealer, unless such person is specified in subparagraph 1.

c. A dealer's employee whose function is only clerical or ministerial.

d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities Exchange Act of 1934, as amended.

(b)1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, an officer, a director, or a branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment



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advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendations or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial ~~or investment adviser, any of the following:~~

~~1. Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;~~

~~2. Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or~~

~~3. Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section~~.

~~The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange Act of 1934, are not "associated persons" within the meaning of this definition.~~



(c) ~~(b)~~ With respect to a federal covered adviser, a natural ~~any~~ person who is an investment adviser representative and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

(4) ~~(3)~~ "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(5) ~~(4)~~ "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

(6) ~~(7)~~ "Commission" means the Financial Services Commission.

(7) ~~(5)~~ "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract,



or otherwise.

(8) ~~(6)(a)~~ "Dealer" includes, unless otherwise specified, a 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 ~~any of the following:~~

~~1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person~~.

~~2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.~~

~~(b)~~ The term ~~"dealer"~~ does not include the following:

(a) A licensed practicing attorney who renders or performs any such services in connection with the regular practice of the attorney's profession.

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

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

(e) A person buying and selling for the person's own



account exclusively through a registered dealer or stock exchange.

(f) An issuer.

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

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

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

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

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

~~1. Any licensed practicing attorney who renders or performs any of such services in connection with the regular practice of her or his profession;~~

~~2. Any bank authorized to do business in this state, except nonbank subsidiaries of a bank;~~

~~3. Any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of~~



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~~its trust powers;~~

~~4. Any wholesaler selling exclusively to dealers;~~

~~5. Any person buying and selling for her or his own account exclusively through a registered dealer or stock exchange; or~~

~~6. Pursuant to s. 517.061(11), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.~~

(9) "Federal covered adviser" means a person that ~~who~~ is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term ~~"federal covered adviser"~~ does not include any person that ~~who~~ is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8.

(10) "Federal covered security" means a ~~any~~ security that is a covered security under s. 18(b) of the Securities Act of 1933, as amended, or rules and regulations adopted thereunder.

(11) "Guarantor" means a person that ~~who~~ agrees in writing, or that ~~who~~ holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment,



without regard to the validity, regularity, or enforceability of the underlying indebtedness.

(12) "Guaranty" means an agreement in ~~a~~ writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying indebtedness or the holder's ~~her or his~~ representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words that ~~which~~ otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

(13) "Intermediary" means a natural person residing in this ~~the~~ state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in this ~~the~~ state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state ~~under s. 517.0611~~.

(14)(a) "Investment adviser" means a ~~includes any~~ person, other than an associated person of an investment adviser or a federal covered adviser, that ~~who~~ receives compensation,



directly or indirectly, and engages for all or part of the person's ~~her or his~~ time, directly or indirectly, or through publications or writings, 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~~, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services~~.

(b) The term ~~"investment adviser"~~ does not include the following:

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

2. A ~~Any~~ licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's ~~her or his~~ profession.~~;~~

~~2. Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;~~

3. A ~~Any~~ bank authorized to do business in this state.~~;~~

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

5. A ~~Any~~ trust company having trust powers, as defined in s. 658.12, which it is authorized to exercise in this ~~the~~ state, which trust company renders or performs investment advisory


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services in a fiduciary capacity incidental to the exercise of its trust powers.~~;~~

6. A ~~Any~~ person that ~~who~~ renders investment advice exclusively to insurance or investment companies.~~;~~

7. A ~~Any~~ person that ~~who~~ does not hold itself ~~herself or himself~~ out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.~~;~~

8. A ~~Any~~ person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~;~~ ~~or~~

9. A federal covered adviser.

(15) "Issuer" means a ~~any~~ person that ~~who~~ proposes to issue, has issued, or shall hereafter issue any security. A ~~Any~~ person that ~~who~~ acts as a promoter for and on behalf of a corporation, trust, ~~or unincorporated association or~~ partnership, limited liability company, association, or other legal entity of any kind to be formed shall be deemed an issuer.

(16) "Offer to sell," "offer for sale," or "offer" means an ~~any~~ attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(17) ~~(8)~~ "Office" means the Office of Financial Regulation of the commission.

(18) ~~(17)~~ "Predecessor" means a person whose ~~the~~ major

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portion of ~~whose~~ assets has ~~have~~ been acquired directly or indirectly by an issuer.

(19)~~(18)~~ "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(20)~~(19)~~ "Promoter" includes the following:

(a) A ~~Any~~ person that ~~who~~, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer.

(b) A ~~Any~~ person that ~~who~~, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person that ~~who~~ receives such securities or proceeds either solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(21)~~(20)~~ "Qualified institutional buyer" means a ~~any~~ qualified institutional buyer, as defined in ~~United States~~ Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

(22)~~(21)~~ "Sale" or "sell" means a ~~any~~ contract of sale or


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disposition of an ~~any~~ investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term ~~defined in this subsection~~ does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security or another issuer, is considered to include an offer of the other security.

(23)~~(22)~~ "Security" includes any of the following:

(a) A note.

(b) A stock.

(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

(j) A whiskey warehouse receipt or other commodity warehouse receipt.

(k) A certificate of interest in a profit-sharing agreement

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or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A ~~Any~~ transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An ~~Any~~ option contract that ~~which~~ entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

(v) A ~~Any~~ receipt for a security, or for subscription to a security, or a ~~any~~ right to subscribe to or purchase any security.

(w) A viatical settlement investment.

(24) ~~(23)~~ "Underwriter" means a person that ~~who~~ has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the



direct or indirect underwriting of any such undertaking; except that a person is ~~shall be~~ presumed not to be an underwriter with respect to any security which it ~~she or he~~ has owned beneficially for at least 1 year; and, further, a dealer is ~~shall~~ not ~~be~~ considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

(25) ~~(24)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

Section 2. Paragraph (d) of subsection (3) of section 517.072, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

517.072 Viatical settlement investments.—

(3) The registration provisions of ss. 517.07 and 517.12 do not apply to any of the following transactions in viatical settlement investments; however, such transactions in viatical settlement investments are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(d) The transfer or assignment of a viaticated policy to a

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bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, ~~or~~ qualified institutional buyer ~~as defined in United States Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a)~~, or ~~to~~ an accredited investor ~~as defined by Rule 501 of Regulation D of the Securities Act Rules~~, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(4) The commission may establish by rule requirements and standards for disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of viatical settlement investments.

Section 3. Paragraphs (a), (g), and (n) of subsection (3) and subsections (6) and (8) of section 517.081, Florida Statutes, are amended to read:

517.081 Registration procedure.—

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

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is ~~be~~ a corporation, association, or trust.

2. All the managers or managing members, if the issuer is a limited liability company.

3. ~~; of~~ All the partners, if the issuer is ~~be~~ a

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partnership.

4. ~~; or of~~ The issuer, if the issuer is a sole proprietorship or natural person ~~be an individual~~.

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

2. The commission shall adopt a form for a simplified offering circular ~~to be used solely by corporations~~ to register, under this section, securities ~~of the corporation~~ that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

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

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

c. An issuer that ~~who~~ is a development-stage company that

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either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

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

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

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

As a condition precedent to qualifying for use of the simplified offering circular, an issuer ~~a corporation~~ shall agree to provide the office 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, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office 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.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability



company, there shall be filed with the application 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 with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of $1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or $200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by commission rule ~~The commission may by rule establish requirements and standards for:~~

~~(a) Disclosures to purchasers of viatical settlement investments~~.

~~(b) Recordkeeping requirements for sellers of viatical settlement investments.~~

Section 4. Section 517.082, Florida Statutes, is amended to



read:

517.082 ~~Notification~~ Registration by notification; federal registration statements.—

(1) ~~Except as provided in subsection (3),~~ Securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933, as amended, are ~~shall be~~ entitled to registration by notification in the manner provided in subsection (2), provided that before ~~prior to~~ the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by all of the following:

(a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold.~~;~~

(b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission may by rule require.~~;~~

(c) An irrevocable written consent to service as required by s. 517.101.~~; and~~

(d) A nonreturnable fee of $1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in

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paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933, as amended, or the Investment Company Act of 1940, as amended, within 10 business days after ~~from~~ the date federal registration is granted. Failure to provide all the information required by this subsection to the office within 60 days after ~~of~~ the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is $5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

(5) If the Securities and Exchange Commission has not declared effective the applicant’s federal registration



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statement within 180 days after the applicant's filing with the office of an application for registration by notification, the office must deem the application abandoned.

Section 5. Section 517.111, Florida Statutes, is amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The office may revoke or suspend the registration of any security, or may deny any application to register securities, if, upon examination or investigation into the affairs of the issuer of such security, the office determines ~~it shall appear~~ that:

(a) The issuer cannot pay its debts as they become due in the usual course of business ~~is insolvent~~;

(b) The issuer or any officer, director, manager or managing member, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office of which such issuer has notice;

(c) The issuer or any officer, director, manager or managing member, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, manager or managing member, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, manager or



managing member, or control person of the issuer has had a final judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, manager or managing member, or control person of the issuer has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1) ~~demonstrated any evidence of unworthiness~~;

(g) The issuer or any officer, director, manager or managing member, or control person of the issuer ~~is in any other way dishonest or~~ has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security; or

(i) For any security for which registration has been applied pursuant to s. 517.081, the terms of the offer or sale of such securities would not be fair, just, or equitable~~; or~~

~~(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the office pursuant to the provisions of s. 517.081 or s. 517.082 or any rule adopted under such sections~~.

(2) In making such examination or investigation, the office shall have access to and may compel the production of all the


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books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the office deems it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the office may require.

(3) ~~(2)~~ If any issuer refuses ~~shall refuse~~ to permit an examination or investigation to be made by the office, it shall be proper ground for revocation of registration.

(4) ~~(3)~~ If the office deems it necessary, it may enter an order suspending the right to sell securities pending any examination or investigation, provided that the order shall state the office's grounds for taking such action.

(5) ~~(4)~~ Notice of the entry of such order shall be given personally or by mail~~, personally, by telephone confirmed in writing, or by telegraph~~ to the issuer. Before such order is made final, the issuer ~~applying for registration~~ shall, on application, be entitled to a hearing.

(6) ~~(5)~~ The office may deny any request to terminate any registration or to withdraw any application for registration if the office believes that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

Section 6. Subsections (3) through (22) of section 517.12, Florida Statutes, are renumbered as subsections (2) through


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(21), respectively, and subsection (1), present subsections (2) and (3), paragraph (b) of present subsection (6), present subsections (7) and (11), paragraph (b) of present subsection (15), and present subsections (20) and (21) of that section are amended, to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1) No dealer or~~,~~ associated person~~, or issuer of securities~~ shall sell or offer for sale any securities in or from offices in this state~~,~~ or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person is ~~has been~~ registered with the office as a dealer or as an associated person of a dealer pursuant to ~~the provisions of~~ this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

~~(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).~~

(2)~~(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19),~~ The registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(10) and (12), ~~s. 517.061(1)-(12),~~ (14), and (15).

(5)~~(6)~~ A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means



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provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(b) The applicant's form and place of organization; and, if the applicant is:

1. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

2. A limited liability company, a copy of its articles of organization with amendments to its articles; or

3.~~, if~~ A partnership, a copy of the partnership agreement.

(6)~~(7)~~ The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~ shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal



history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's ~~His or her~~ full name, and any other names by which the applicant or person ~~he or she~~ may have been known, and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the

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applicant's or person's ~~his or her~~ commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to the applicant's or person's ~~his or her~~ character, reputation, and financial responsibility.

(10)(a) ~~(11)(a)~~ If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its ~~his or her~~ registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office



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during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (9)(a) ~~(10)(a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

(14) ~~(15)~~

(b) In lieu of filing with the office the applications specified in subsection (5) ~~(6)~~, the fees required by subsection (9) ~~(10)~~, the renewals required by subsection (10) ~~(11)~~, and the termination notices required by subsection (11) ~~(12)~~, the


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commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(19) ~~(20)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant’s form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of



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organization and amendments to the articles and a copy of the company's operating agreement as may be amended; or

c.~~, if~~ A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that


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such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's ~~His or her~~ full name and any other names by which the applicant or person ~~he or she~~ may have been known and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, ~~or small loan companies,~~ real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's ~~his or her~~ commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director,


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officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests ~~shares~~ of the intermediary is subject to this requirement.

(e) If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(20) ~~(21)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(23)(g) ~~s. 517.021(22)(g)~~, if the individual is directly authorized by the issuer to offer or sell



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the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 7. Section 517.1214, Florida Statutes, is created to read:

517.1214 Continuing education requirements for associated persons of investment advisers and federal covered advisers.—

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

(a) "Approved continuing education content" means the materials, written, oral, or otherwise, which have been approved by NASAA or its designee and which make up the educational program provided to an associated person under this section.

(b) "Credit" means a unit designated by NASAA or its designee as at least 50 minutes of educational instruction.

(c) "Home state" means the state in which an associated person of an investment adviser or a federal covered adviser has his or her principal office and place of business.

(d) "NASAA" means the North American Securities Administrators Association, Inc.

(e) "Reporting period" means one 12-month period beginning January 1 and ending December 31. An associated person's initial reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(2) By December 31, 2024, and each December 31 thereafter, each associated person of an investment adviser or a federal covered adviser shall complete the following continuing



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education content requirements offered by a person that NASAA or its designee has authorized to provide the continuing education content required by this section:

(a) Six credits of approved continuing education content that addresses an associated person's ethical and regulatory obligations, with at least 3 hours covering the topic of ethics; and

(b) Six credits of approved continuing education content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(3) An associated person of an investment adviser or federal covered adviser who is also registered as an associated person of a Financial Industry Regulatory Authority (FINRA) member dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this section's products and practice requirement for each applicable reporting period, provided that the FINRA continuing education content is approved continuing education content.

(4) Credits of continuing education completed by an associated person who was awarded and currently holds a credential that qualifies for examination waiver by passing any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934, as amended, comply with paragraphs (2)(a) and (b), provided all of the following conditions are met:

(a) The associated person completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

(b) The credits of continuing education completed during



the relevant reporting period by the associated person are mandatory to maintain the credential.

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved continuing education content.

(5) Each associated person is responsible for ensuring that the authorized provider reports the associated person's completion of the applicable continuing education requirements.

(6) An associated person who completes credits of continuing education in excess of the credits required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(7) An associated person who fails to comply with this section by the end of a reporting period shall renew as "CE inactive" at the close of the calendar year in this state until the associated person completes and reports all required continuing education credits for all reporting periods as required by this section. An associated person who is "CE inactive" at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration.

(8) An associated person registered or required to be registered in this state who is registered as an associated person of an investment adviser or federal covered adviser in the individual's home state is considered to be in compliance with this section if:

(a) The associated person's home state has a continuing education requirement of at least 12 hours annually; and

(b) The associated person is in compliance with the home



state's associated person of an investment adviser or federal covered adviser continuing education requirements.

(9) An associated person who was previously registered under s. 517.12 and became unregistered must complete continuing education for all reporting periods that occurred between the time that the associated person became unregistered and when the person became registered again under s. 517.12, unless the associated person takes and passes the required examinations or the examination requirements are waived in connection with the subsequent application for registration.

Section 8. Section 517.1217, Florida Statutes, is amended to read:

517.1217 Rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries.—The commission by rule may establish rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the ~~United States~~ Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 9. Subsections (1), (4), and (5) of section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—



(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer~~, broker,~~ or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering


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for sale securities through any associated person not registered in compliance with ~~the provisions of~~ this chapter;

(h) ~~Has demonstrated unworthiness to transact the business of dealer, investment adviser, intermediary, or associated person;~~

~~(i)~~ Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, intermediary, or investment adviser, unable to pay its debts as they become due in the usual course of business ~~insolvent~~;

(i)~~(j)~~ Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(j)~~(k)~~ Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

~~(l) Is of bad business repute;~~

(k)~~(m)~~ Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or


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federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance ~~or small loan companies~~, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; ~~or~~

(l) ~~(n)~~ Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution;

(m) Failed to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer,



or associated person complies with the terms of the alternative payment arrangement;

(n) Attempted to avoid payment of any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer, or associated person complies with the terms of the alternative payment arrangements; or

(o) Failed to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser, dealer, or associated person by the Securities and Exchange Commission, the securities regulator or other financial services regulator of any state or province, or any securities industry self-regulatory organization.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, limited liability company, or unincorporated association, if any member of the partnership, any manager or managing member of the limited liability company, or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership



interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act that ~~which~~ would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

Section 10. Section 517.181, Florida Statutes, is repealed.

Section 11. Paragraph (a) of subsection (4) of section 517.201, Florida Statutes, is amended to read:

517.201 Investigations; examinations; subpoenas; hearings; witnesses.—

(4)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office pursuant to this section, the office may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution ~~in or from offices in this state~~ of securities or investments in or from this state by the noncompliant ~~a~~ person or its agent, employee, broker, partner, officer, director,

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manager, managing member, equity holder, or any person directly or indirectly controlling the noncompliant person ~~stockholder thereof~~, and may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office has completed its investigation or examination. The office is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

Section 12. Paragraph (d) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with



			wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1197			
	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
1198			
	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1199			
	517.07(1)	3rd	Failure to register securities.
1200			
	517.12(1)	3rd	Failure of dealer or~~,~~ associated person of a dealer~~, or issuer~~ of securities to register.
1201			
	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
1202			
	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
1203			
	784.075	3rd	Battery on detention or

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		commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody



		proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.



810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.



817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.
836.14(3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.



837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).



847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.

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918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 13. Section 517.1215, Florida Statutes, is amended to read:

517.1215 Requirements, rules of conduct, and prohibited business practices for investment advisers ~~advisors~~ and their associated persons.—

(1) The commission shall specify by rule requirements for investment advisers ~~advisors~~ deemed to have custody of client funds which concern the following:

(a) Notification of custody of, maintenance of, and



safeguards for client funds.

(b) Communications with clients and independent representatives.

(c) Requirements for investment advisers who have custody of pooled investments.

(d) Exceptions to the custody requirements.

In adopting the rules, the commission shall consider the rules and regulations of the federal regulatory authority and the North American Securities Administrators Association, Inc.

(2) The commission shall by rule establish rules of conduct and prohibited business practices for investment advisers and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the ~~United States~~ Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 14. Subsections (18) and (22) of section 517.061, Florida Statutes, are amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following



transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16) ~~s. 517.12(17)~~.

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21) ~~s. 517.12(22)~~.

Section 15. Paragraph (b) of subsection (4) and subsection (14) of section 517.0611, Florida Statutes, are amended to read:

517.0611 Intrastate crowdfunding.—

(4) An issuer must:

(b) Conduct transactions for the offering through a dealer registered with the office or an intermediary registered under s. 517.12(19) ~~s. 517.12(20)~~.

(14) An intermediary not registered as a dealer under s. 517.12(5) ~~s. 517.12(6)~~ may not:

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

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

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

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

(e) Compensate promoters, finders, or lead generators for



providing the intermediary with the personal identifying information of any potential investor.

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

Section 16. Subsection (1) of section 517.075, Florida Statutes, is amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(1) Any issuer of securities that will be sold in this state pursuant to a prospectus must disclose in the prospectus if the issuer or any affiliate thereof~~, as defined in s. 517.021(1),~~ does business with the government of Cuba or with any person or affiliate located in Cuba. The prospectus disclosure required by this subsection does not apply with respect to prospectuses prepared before April 10, 1992.

Section 17. Paragraph (a) of subsection (1) of section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for associated persons shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

Section 18. Subsection (1) of section 517.211, Florida

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Statutes, is amended to read:

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) ~~(4), (5), (9), (11), (13), (16), or (18)~~ may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(12) ~~s. 517.12(13)~~ relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or 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. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any


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income received by the purchaser on the security.

Section 19. Section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(1) The office shall transfer the amount of fees required to be deposited into the Securities Guaranty Fund pursuant to s. 517.131.~~;~~

(2) After the transfer required in subsection (1), the office shall transfer the $50 assessment fee collected from each associated person under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ and 30.44 percent of the $100 assessment fee paid by dealers and investment advisers ~~advisors~~ for each office in the state under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ to the Regulatory Trust Fund.~~; and~~

(3) All remaining fees shall be deposited into the General Revenue Fund.

Section 20. Subsection (5) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(5) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(a) On behalf of a viatical settlement provider, viatical settlement broker, life agent, or person engaged in the business of viatical settlements;

(b) In connection with a viatical settlement investment as defined in s. 517.021~~, pursuant to s. 517.021(24)~~; or



(c) On residents of this state in connection with a viatical settlement contract or viatical settlement investment.

Section 21. Subsection (6) of section 744.351, Florida Statutes, is amended to read:

744.351 Bond of guardian.—

(6) When it is expedient in the judgment of any court having jurisdiction of any guardianship property, because the size of the bond required of the guardian is burdensome, or for other cause, the court may order, in lieu of a bond or in addition to a lesser bond, that the guardian place all or part of the property of the ward in a designated financial institution under the same conditions and limitations as are contained in s. 69.031. A designated financial institution shall also include a dealer~~,~~ as defined in s. 517.021 ~~s. 517.021(6),~~ if the dealer is a member of the Security Investment Protection Corporation and is doing business in the state.

Section 22. Section 517.1205, Florida Statutes, is amended to read:

517.1205 Registration of associated persons specific as to securities dealer, investment adviser, or federal covered adviser identified at time of registration approval.—Inasmuch as this chapter is intended to protect investors in securities offerings and other investment transactions regulated by that chapter, its provisions are to be construed to require full and fair disclosure of all, but only, those matters material to the investor’s evaluation of the offering or other transaction. It should, furthermore, be construed to impose the standards provided by law on all those seeking to participate in the state’s securities industry through registration as a securities

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dealer, investment adviser, or associated person. To this end, it is declared to be the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved. Notwithstanding any interpretation of law to the contrary, the historical practice of the Department of Banking and Finance, reflected in its rules, that requires a new application for registration from a previously registered associated person when that person seeks to be associated with a new securities dealer or investment adviser is hereby ratified and approved as consistent with legislative intent. It is, finally, declared to be the intent of the Legislature that while approval of an application for registration of a securities dealer, investment adviser, or associated person requires a finding of compliance with the applicable registration provisions of this chapter and applicable rules ~~the applicant's good repute and character~~, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law.

Section 23. This act shall take effect October 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to regulation of securities; reordering and amending s. 517.021, F.S.; requiring the Financial Services Commission to define the term



"accredited investor" by rule; revising definitions; amending s. 517.072, F.S.; authorizing the commission to adopt certain rules relating to viatical settlement investments; making technical changes; amending s. 517.081, F.S.; revising requirements for the registration of securities; revising application fees for certain securities registrations; requiring the Office of Financial Regulation to deem an application abandoned under certain circumstances; conforming provisions to changes made by the act; amending s. 517.082, F.S.; making technical changes; requiring the office to deem an application for registration by notification abandoned under certain circumstances; amending s. 517.111, F.S.; revising grounds on which the office may revoke, suspend, or deny the registration of securities; specifying the office's powers in investigations of issuers; revising the methods by which the office may enter an order suspending an issuer's right to sell securities; amending s. 517.12, F.S.; revising applicability of registration requirements; revising requirements for applying for registration as a dealer, an associated person of a dealer, or an investment adviser; conforming a cross-reference and provisions to changes made by the act; making technical changes; creating s. 517.1214, F.S.; defining terms; specifying continuing education requirements for associated persons of investment advisers and federal covered advisers; providing that certain education credits satisfy such



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requirements if certain conditions are met; prohibiting associated persons from carrying forward credits to subsequent reporting periods; specifying a restriction on associated persons who fail to meet such requirements; specifying requirements for certain previously registered associated persons; amending s. 517.1217, F.S.; authorizing the commission to establish rules of conduct and prohibited business practices for intermediaries; amending s. 517.161, F.S.; revising grounds on which the office may deny, revoke, restrict, or suspend registrations of dealers, investment advisers, intermediaries, and associated persons; providing causes for denial of applications or revocation of registrations of certain entities and persons under certain circumstances; repealing s. 517.181, F.S., relating to escrow agreements; amending s. 517.201, F.S.; conforming a provision to changes made by the act; amending s. 921.0022, F.S.; revising applicability of a criminal penalty for certain registration violations; amending s. 517.1215, F.S.; making technical changes; amending ss. 517.061, 517.0611, 517.075, 517.131, 517.211, 517.315, 626.9911, and 744.351, F.S.; conforming cross-references and making technical changes; amending s. 517.1205, F.S.; revising legislative intent; providing an effective date.

By Senator Gruters

22-00202B-23 2023180__

A bill to be entitled

An act relating to securities transactions; reordering and amending s. 517.021, F.S.; adding and revising definitions; requiring the Financial Services Commission to define the term "accredited investor"; amending s. 517.061, F.S.; revising conditions for securities transactions exempt from registration requirements; exempting the offer and sale of an issuer's own securities from registration requirements if certain conditions are met; requiring such issuers to file certain information with the Office of Financial Regulation within a certain timeframe; authorizing the commission to adopt rules; making technical and conforming changes; amending s. 517.0611, F.S.; revising federal standards for intrastate crowdfunding securities offerings; revising requirements for issuers and intermediaries of such securities; revising the limit on consideration received for sales of such securities; conforming cross-references and provisions to changes made by the act; creating s. 517.065, F.S.; authorizing issuers or their authorized persons to communicate with prospective investors to determine their interest in a contemplated security offering; specifying conditions and restrictions relating to such preoffering communications; providing that certain preoffering communications are not subject to certain requirements and restrictions if certain conditions are met; providing construction; amending s. 517.072, F.S.;

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authorizing the commission to adopt certain rules relating to viatical settlement investments; conforming a provision to changes made by the act; amending s. 517.081, F.S.; revising requirements for the registration of securities; deleting a limit on, and the commission's rulemaking authority to fix, maximum compensation in connection with the sale or offering of securities; revising application fees for certain securities registrations; requiring the office to deem an application abandoned under certain circumstances; conforming provisions to changes made by the act; amending s. 517.082, F.S.; deleting a restriction on securities registration by notification for specified securities; requiring the office to deem applications for registration by notification abandoned under certain circumstances; making technical changes; amending s. 517.111, F.S.; revising grounds on which the office may revoke, suspend, or deny the registration of securities; specifying the office's powers in investigations of issuers; revising the methods by which the office may enter an order suspending an issuer's right to sell securities; amending s. 517.12, F.S.; revising prohibited acts of dealers and associated persons without required registration; prohibiting the office from registering a person as an associated person of a dealer unless the dealer is lawfully registered; revising applicability of registration requirements; revising requirements for applying for registration as a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

dealer, an associated person, or an investment adviser; conforming provisions to changes made by the act; making technical changes; creating s. 517.1214, F.S.; defining terms; specifying continuing education requirements for associated persons of investment advisers and federal covered advisers; providing that certain education credits satisfy such requirements if certain conditions are met; prohibiting associated persons from carrying forward credits to subsequent reporting periods; specifying a restriction on associated persons who fail to meet such requirements; specifying requirements for certain previously registered associated persons; amending s. 517.1217, F.S.; revising the commission's rulemaking authority as to rules of conduct and prohibited business practices of dealers, associated persons, and intermediaries; specifying disclosure requirements for Tier II dealers as to prospective investors; specifying prohibited acts of Tier II dealers and associated persons; amending s. 517.161, F.S.; revising grounds on which the office may revoke, restrict, or suspend registrations of dealers, investment advisers, intermediaries, or associated persons; amending s. 517.1611, F.S.; conforming a provision to changes made by the act; repealing s. 517.181, F.S., relating to escrow agreements; amending s. 517.191, F.S.; authorizing the office to recover its investigation and enforcement costs and attorney fees in certain civil actions; requiring such moneys

to be deposited into the Anti-Fraud Trust Fund; specifying the liability of certain control persons; providing construction; amending s. 517.201, F.S.; conforming a provision to changes made by the act; amending s. 921.0022, F.S.; revising applicability of a criminal penalty for certain registration violations; amending ss. 517.051 and 517.1215, F.S.; making technical changes; amending ss. 517.075, 517.131, 517.211, 517.315, 626.9911, and 744.351, F.S.; conforming cross-references and making technical changes; providing an effective date.

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

Section 1. Section 517.021, Florida Statutes, is reordered and amended to read:

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

(1) "Accredited investor" shall be defined by rule of the commission. In adopting the rule, the commission shall consider how the term is defined in the rules and regulations of the various federal and self-regulatory securities agencies and securities regulatory associations.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

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

and procedures for making investment decisions, individually or among the membership of the group as a whole, and are neither associated persons nor agents of any dealer or investment adviser.

(4) ~~(2)~~ "Associated person" means:

(a) 1. With respect to a dealer, a natural person who is ~~or investment adviser, any of the following~~:

a. Employed, appointed, or authorized by a Tier I dealer and who represents the Tier I dealer in effecting or attempting to effect purchases or sales of securities; or

b. Employed, appointed, or authorized by a Tier II dealer and who represents the Tier II dealer in introducing or referring, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in this state:

(I) One or more potential investors whom such natural person reasonably believes are accredited investors to an issuer with a principal place of business in this state; or

(II) An issuer with a principal place of business in this state to one or more potential investors whom such natural person reasonably believes are accredited investors.

2. The term does not include the following:

a. A dealer.

b. A partner, officer, or director of a Tier I dealer or a person having a similar status or performing similar functions as a Tier I dealer, unless such person is specified in subparagraph 1.

c. A dealer's employee whose function is only clerical or ministerial.

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d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities Exchange Act of 1934, as amended.

(b) 1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, officer, director, or branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendation or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial

~~1. Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;~~

~~2. Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an~~

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~~employee whose function is only clerical or ministerial; or~~

~~3. Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section~~.

~~The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange Act of 1934, are not "associated persons" within the meaning of this definition.~~

(c) ~~(b)~~ With respect to a federal covered adviser, a natural ~~any~~ person who is an investment adviser representative and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

(5) ~~(3)~~ "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(6) ~~(4)~~ "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used

by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

(7) "Business accelerator" means an organization offering a variety of mentoring or coaching resources to businesses that have completed, or are close to completing, a minimum viable product or service in a time-intensive, capital-funding-focused program having durations from several months to a year. A business accelerator may also offer business incubator services.

(8) "Business incubator" means an organization offering a variety of networking, mentoring, or coaching resources to pre-revenue seed or idea-stage businesses with shared workspaces to facilitate such businesses' development into post-revenue, pre-profit, early stage businesses. A business incubator may also offer business accelerator services.

(10) ~~(5)~~ "Control," ~~including the terms~~ "controlling," "controlled by," or "under control with" ~~and "under common control with,"~~ means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(11) "Control person" means a person that possesses the power, directly or indirectly, to direct or to cause the direction of the management or policies of an organization, whether through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of an organization if, with respect to a particular organization, the

person:

(a) Holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer;

(b) Holds any of the officer positions named in the organization's governing documents;

(c) Is a member of the organization's board of directors;

(d) For an organization that is a corporation, is a shareholder that, directly or indirectly, owns 25 percent or more or has the power to vote 25 percent or more of a class of voting securities;

(e) For an organization that is a partnership, is a general partner or a limited or special partner that has contributed 25 percent or more or that has the right to receive upon dissolution 25 percent or more of the partnership's capital; or

(f) For an organization that is a limited liability company, is a manager or is a member that has contributed 25 percent or more or that has the right to receive upon dissolution 25 percent or more of the limited liability company's capital.

(12) ~~(6)(a)~~ "Dealer" includes, unless otherwise specified, any Tier I dealer or Tier II dealer ~~any of the following:~~

~~1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person~~.

~~2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her~~

~~or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.~~

~~(b) The term "dealer" does not include the following:~~

~~1. Any licensed practicing attorney who renders or performs any of such services in connection with the regular practice of her or his profession;~~

~~2. Any bank authorized to do business in this state, except nonbank subsidiaries of a bank;~~

~~3. Any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;~~

~~4. Any wholesaler selling exclusively to dealers;~~

~~5. Any person buying and selling for her or his own account exclusively through a registered dealer or stock exchange; or~~

~~6. Pursuant to s. 517.061(11), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.~~

(9) ~~(7)~~ "Commission" means the Financial Services Commission.

(22) ~~(8)~~ "Office" means the Office of Financial Regulation of the commission.

(13) ~~(9)~~ "Federal covered adviser" means a person that ~~who~~ is registered or required to be registered under s. 203 of the

Investment Advisers Act of 1940, as amended. The term ~~"federal covered adviser"~~ does not include any person that ~~who~~ is excluded from the definition of investment adviser under subparagraphs (18)(b)1.-8. ~~(14)(b)1.-8.~~

(14)~~(10)~~ "Federal covered security" means a ~~any~~ security that is a covered security under s. 18(b) of the Securities Act of 1933, as amended, or rules and regulations adopted thereunder.

(15)~~(11)~~ "Guarantor" means a person that ~~who~~ agrees in writing, or that ~~who~~ holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment, without regard to the validity, regularity, or enforceability of the underlying indebtedness.

(16)~~(12)~~ "Guaranty" means an agreement in ~~a~~ writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying

indebtedness or the holder's ~~her or his~~ representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words that ~~which~~ otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

(17)~~(13)~~ "Intermediary" means a natural person residing in this ~~the~~ state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in this ~~the~~ state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state ~~under s. 517.0611~~.

(18)(a)~~(14)(a)~~ "Investment adviser" means a ~~includes any~~ person, other than an associated person of an investment adviser or a federal covered adviser, that ~~who~~ receives compensation, directly or indirectly, and engages for all or part of the person's ~~her or his~~ time, directly or indirectly, or through publications or writings, 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~~, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services~~.

(b) The term ~~"investment adviser"~~ does not include the following:

1. A dealer or associated person of a dealer whose performance of services in paragraph (a) is solely incidental to

the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A ~~Any~~ licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's ~~her or his~~ profession.~~;~~

~~2. Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;~~

3. A ~~Any~~ bank authorized to do business in this state.~~;~~

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

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

6. A ~~Any~~ person that ~~who~~ renders investment advice exclusively to insurance or investment companies.~~;~~

7. A ~~Any~~ person that ~~who~~ does not hold itself ~~herself or himself~~ out to the general public as an investment adviser, has a place of business located in this state, and has fewer ~~no more~~ than six ~~15~~ clients during the preceding ~~within~~ 12 ~~consecutive~~ months. ~~in this state;~~

8. A ~~Any~~ person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients

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

9. A federal covered adviser.

(19)~~(15)~~ "Issuer" means a ~~any~~ person that ~~who~~ proposes to issue, has issued, or shall hereafter issue any security. A ~~Any~~ person that ~~who~~ acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(20) "Natural person" means an individual.

(21)~~(16)~~ "Offer to sell," "offer for sale," or "offer" means an ~~any~~ attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(23)~~(17)~~ "Predecessor" means a person whose ~~the~~ major portion of ~~whose~~ assets has ~~have~~ been acquired directly or indirectly by an issuer.

(24)~~(18)~~ "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(25)~~(19)~~ "Promoter" includes the following:

(a) A ~~Any~~ person that ~~who~~, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer.

(b) A ~~Any~~ person that ~~who~~, in connection with the founding

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or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person that ~~who~~ receives such securities or proceeds either solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(26)~~(20)~~ "Qualified institutional buyer" means a ~~any~~ qualified institutional buyer, as defined in ~~United States~~ Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

(27)~~(21)~~ "Sale" or "sell" means a ~~any~~ contract of sale or disposition of an ~~any~~ investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term ~~defined in this subsection~~ does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a

security which gives the holder a present or future right or privilege to convert into another security or another issuer, is considered to include an offer of the other security.

(28)~~(22)~~ "Security" includes any of the following:

(a) A note.

(b) A stock.

(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

(j) A whiskey warehouse receipt or other commodity warehouse receipt.

(k) A certificate of interest in a profit-sharing agreement or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A ~~Any~~ transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An ~~Any~~ option contract that ~~which~~ entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

(v) A ~~Any~~ receipt for a security, or for subscription to a security, or a ~~any~~ right to subscribe to or purchase any security.

(w) A viatical settlement investment.

(29) "Target offering amount" means the minimum amount of funds required to accomplish the stated purpose for the use of proceeds as specified in the disclosure statement.

(30) "Tier I dealer" means a 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 the following:

(a) A licensed practicing attorney who renders or performs any such services in connection with the regular practice of the attorney's profession.

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

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

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

(f) A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

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

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

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

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

(31) "Tier II dealer" means a person, other than an associated person of a Tier II dealer, that, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in this state, introduces or refers:

(a) One or more prospective investors whom the person reasonably believes are accredited investors to an issuer with a principal place of business in this state; or

(b) An issuer with a principal place of business in this

state to one or more prospective investors whom the person reasonably believes are accredited investors.

(32)~~(23)~~ "Underwriter" means a person that ~~who~~ has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person is ~~shall be~~ presumed not to be an underwriter with respect to any security which it ~~she or he~~ has owned beneficially for at least 1 year; and, further, a dealer is ~~shall~~ not ~~be~~ considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

(33)~~(24)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

Section 2. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21) or subsection (23), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) 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, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner of such securities, but ~~vendor~~ not the issuer or underwriter of the securities, who~~,~~ ~~being the bona fide owner of such securities,~~ disposes of such securities for the owner's ~~her or his own property for her or his~~ own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any

scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a bona fide owner of such ~~vendor of~~ securities, but not the issuer or underwriter of such ~~the~~ securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., and 3.~~, and 4.~~ and paragraph (11)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) ~~s. 4(1)~~ of the Securities Act of 1933, as amended, or the rules promulgated by the Securities and Exchange Commission thereunder.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, limited liability company, 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.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, limited liability company, trust, or partnership in the process of a

reorganization of such corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days after ~~of~~ issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, as amended, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one organization ~~corporation~~ to another organization if ~~corporation provided that~~:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporations each have assets of $500,000 or more.

(9) The distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties ~~The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets~~.

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

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

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

2. Neither the issuer nor any person acting on behalf of

the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any organization ~~corporation~~ specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a

purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor~~, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501)~~.

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 60 calendar days ~~6 months~~ before an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 60-calendar-day ~~6-month~~ period.

b. Offers or sales of securities occurring at any time after 60 calendar days ~~6 months~~ from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 60-calendar-day ~~6 month~~ period.

2.a. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part

of the same offering, depending on the particular facts and circumstances in each case and those factors specified by commission rule.

b. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 are ~~shall~~ not ~~be~~ considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise

with the intent of violation or evading any provision of this chapter.

(14) The offer or sale of equity interests of an organization ~~shares of a corporation~~ which represent ownership, or entitle the holders of the equity interests ~~shares~~ to possession and occupancy, of specific apartment units in property owned by such organization ~~corporation~~ and organized and operated on a cooperative basis, solely for residential purposes.

(15) 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.

(16) The sale by or through a registered dealer of any securities option if at the time of the sale of the option all of the following conditions are met:

(a)1. The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

2.~~(b)~~ Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office.~~; and~~

(b)~~(c)~~ The option is not sold by or for the benefit of the issuer of the underlying security.~~; and~~

(c)~~(d)~~ The underlying security may be purchased or sold on a ~~recognized~~ securities exchange registered under s. 6 of the

Securities Exchange Act of 1934, as amended. ~~or is quoted on the National Association of Securities Dealers Automated Quotation System; and~~

(d)~~(c)~~ Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

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

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

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

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

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933, as amended, and is not subject to any registration or filing requirements under this chapter ~~act~~, which ~~appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which~~ securities have been listed or approved for listing upon notice of issuance by a securities exchange registered pursuant to the Securities Exchange Act of 1934, as amended ~~such exchange~~, and also all securities senior to any securities so

listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by an issuer with a class of securities ~~companies any stock of which is so~~ listed or approved for listing upon notice of issuance by such securities exchange, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

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

(c) This exemption is ~~shall~~ not ~~be~~ available for any securities that ~~which~~ have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16) ~~s. 517.12(17)~~.

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the

public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

(20) Any nonissuer transaction by a registered associated person of a registered Tier I dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction, all of the following conditions are met:

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

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

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security.~~;~~

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or order

of the office, or a document is filed with the Securities and Exchange Commission which ~~that~~ is publicly available through the Securities and Exchange Commission's electronic data gathering and retrieval system and which contains:

1. A description of the business and operations of the issuer;

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

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

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.~~; and~~

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended ~~or designated for trading on the National Association of Securities Dealers Automated Quotation System~~, unless:

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

2. The issuer of the security has been engaged in

continuous business, including predecessors, for at least 3 years; or

3. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21) ~~s. 517.12(22)~~.

(23) The offer or sale, by or on behalf of an issuer, of the issuer's own securities, which offer or sale is part of an offering made in accordance with all of the following:

(a) Sales of securities are made only to persons who are, or whom the issuer reasonably believes are, accredited investors.

(b) An issuer that is in the development stage must have a specific business plan or purpose and such purpose or business plan may not be to engage in a merger or acquisition with an unidentified company or other entity or person.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to resell in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months after a sale is presumed to be with a view to distribution and

not for investment, except a resale pursuant to a registration effective under this chapter or the Securities Act of 1933, as amended, or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulations adopted thereunder.

(d) Neither the issuer nor any beneficial owner of 10 percent or more of any class of the issuer's equity securities; any affiliated issuer; any of the issuer's predecessors, directors, officers, or general partners; any of the issuer's promoters presently connected with the issuer in any capacity; any underwriter of the securities to be offered; or any partner, director, or officer of such underwriter:

1. Has, within the last 5 years, filed a registration statement that is the subject of a currently effective registration stop-order entered by a state securities administrator or the Securities and Exchange Commission;

2. Has, within the last 5 years, been convicted of a criminal offense in connection with the offer, purchase, or sale of a security or involving fraud or deceit;

3. Is currently subject to a state or federal administrative enforcement order or judgment entered within the last 5 years finding fraud or deceit in connection with the purchase or sale of a security; or

4. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction entered within the last 5 years temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in, or continuing to engage in, a conduct or practice involving fraud or deceit in connection with the purchase or sale of a security.

(e) The issuer may make or cause the making of a general announcement of the proposed offering, which, if made, must include all of the following information:

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

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

3. A brief description of the business of the issuer in 25 words or fewer.

4. The type, number, and aggregate amount of securities offered.

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

6. A statement that:

a. Sales will be made only to accredited investors who are Florida residents at the time of sale;

b. No money or other consideration is being solicited or will be accepted by way of this general announcement; and

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

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

1. Electronically to persons who have been prequalified as accredited investors; or

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

(g) Telephone solicitation is not authorized unless, before placing the call, the issuer reasonably believes that the prospective investor to be solicited is an accredited investor.

(h) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this subsection.

(i) Within 15 days after the first sale in this state, the issuer shall file with the office a notice of transaction on a form prescribed by commission rule, a consent to service of process similar to that provided in s. 517.101, and a copy of the general announcement. The commission may establish by rule procedures for filing documents by electronic means.

Section 3. Subsections (3) and (4), paragraphs (d), (e), and (g) of subsection (5), subsections (7), (9), and (10), paragraphs (b), (c), (f), (g), and (i) of subsection (13), and subsection (14) of section 517.0611, Florida Statutes, are amended to read:

517.0611 Intrastate crowdfunding.—

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in:

(a) Section 3(a)(11) ~~s. 3(a)(11)~~ of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, and ~~United States~~ Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, adopted pursuant to the Securities Act of 1933, as amended; or

(b) Securities and Exchange Commission Rule 147A, 17 C.F.R. s. 230.147A.

(4) An issuer must:

(a) Be a for-profit business entity and ~~formed under the laws of the state, be registered with the Secretary of State,~~ maintain its principal place of business in this ~~the~~ state~~, and derive its revenues primarily from operations in the state~~.

(b) Conduct transactions for the offering through a Tier I dealer registered with the office or an intermediary registered under s. 517.12(19) ~~s. 517.12(20)~~.

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

(d) Not be an organization ~~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.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, person occupying a similar status or performing a similar function, or person holding more than 20 percent of the shares of the issuer, is subject to this requirement.

(f) Through an escrow agreement or a trust account arrangement entered into with a third party, cause all funds

received from investors to be deposited in a federally insured account for benefit of the investors and maintain all such funds in the account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. All funds must be used in accordance with the uses of proceeds represented to prospective investors ~~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~~.

(g) 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.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee shall be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12

months after filing the notice with the office and are not eligible for renewal. The notice must:

(d) Identify any predecessors, owners, officers, directors, and control persons or any person occupying a similar status or performing a similar function of the issuer, including that person's:

1. Title;

2. ~~, his or her~~ Status as a partner, trustee, or sole proprietor, or in a similar role;~~,~~ and

3. ~~his or her~~ Ownership percentage.

(e) Identify the federally insured financial institution~~,~~ ~~authorized to do business in the state,~~ in which investor funds will be deposited~~,~~ in accordance with the escrow agreement or trust account arrangement.

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

(7) The issuer must provide to prospective investors and the dealer or intermediary, along with a copy to the office at the time that the notice is filed, and make available to prospective ~~potential~~ investors through the dealer or intermediary~~,~~ a disclosure statement containing material information about the issuer and the offering, including all of the following:

(a) The name, legal status, physical address, and website address of the issuer.

(b) The names of the directors, officers, and any person occupying a similar status or performing a similar function, and the name of each person holding more than 20 percent of the

shares or interests of the issuer.

(c) A description of the business of the issuer and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

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

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

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

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

2. A description of how the exercise of the rights held by the control persons ~~principal shareholders~~ of the issuer could negatively impact the purchasers of the securities being offered.

3. The name and ownership level of each existing shareholder or member who owns more than 20 percent of any class of the securities of the issuer.

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

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

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

(h) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.

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

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $500,000, the

description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

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

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

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $5 ~~$1~~ million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the

first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding equity ownership ~~shares~~ of any class or classes of securities or to an officer, director, partner, limited liability company manager or managing member, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor ~~as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933~~, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection in a 12-month period may not exceed:

(a) The greater of $2,000 or 5 percent 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.

(b) Ten percent 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.

(13) An intermediary must:

(b) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information must include:

1. A description of the escrow agreement or trust account arrangement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and subsection (4).

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

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

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

(g) Direct investors to transmit funds directly to the escrow agent or trust account trustee with evidence of the transmission of funds provided to the intermediary ~~financial institution designated in the escrow agreement to hold the funds for the benefit of the investor~~.

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

I understand and acknowledge that:

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

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has

confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

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

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

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

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

(14) An intermediary not registered as a dealer under s.

517.12(5) ~~s. 517.12(6)~~ may not:

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

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

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

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

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

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

Section 4. Section 517.065, Florida Statutes, is created to read:

517.065 Preoffering communications.—

(1) At any time before the formal commencement of an offering of a security, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing with prospective investors to determine their interest in the contemplated security offering. Preoffering communications are deemed to be an offer for sale of a security for purposes of the antifraud provisions of ss. 517.301, 517.311, and 517.312. A solicitation or acceptance of money or other consideration or any commitment, binding or otherwise, from any person is not

permitted during the preoffering period until the offering has formally commenced.

(a) For the preoffering safe harbor to be available to an issuer, the preoffer communications must state that:

1. No money or other consideration is being solicited and, if sent in response, will not be accepted.

2. No offer to buy the securities can be accepted and no part of the purchase price can be received until the offering has formally commenced, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time before notice of its acceptance is given after the registration date.

3. A person's indication of interest involves no obligation or commitment of any kind.

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

(2) A preoffering communication by the potential issuer of securities is not deemed to be in violation of s. 517.07 and is not deemed to constitute general solicitation or general advertising under s. 517.061(11) if made in connection with a seminar or meeting in which more than one issuer participates and if the seminar or meeting is 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, business incubator, or business accelerator, provided that all of the following

conditions are met:

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

(b) The sponsor of the seminar or meeting does not do any of the following:

1. Make investment recommendations or provide investment advice to event attendees.

2. Engage in any investment negotiations between the issuer and event attendees.

3. Charge event attendees any fees other than reasonable administrative fees.

4. Receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties.

5. Receive any compensation with respect to the event which would require registration of the sponsor as a dealer, intermediary, or investment adviser under s. 517.12.

(c) The type of information regarding an offering of securities by the issuer which is communicated or distributed by or on behalf of the issuer in connection with the event is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in the offering.

(d) If the event allows attendees to participate virtually rather than in person, online participation in the event is limited to:

1. Natural persons who are members of or otherwise associated with the sponsor organization.

2. Natural persons whom the sponsor reasonably believes are accredited investors.

3. Natural persons who have been invited to the event by the sponsor based on industry or investment-related experience and have been reasonably selected in good faith.

(e) A sponsor of the seminar or meeting that complies with paragraphs (b), (c), and (d) is deemed to be exempt from the registration requirements of s. 517.12.

Section 5. Paragraph (d) of subsection (3) of section 517.072, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

517.072 Viatical settlement investments.—

(3) The registration provisions of ss. 517.07 and 517.12 do not apply to any of the following transactions in viatical settlement investments; however, such transactions in viatical settlement investments are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, or qualified institutional buyer as defined in ~~United States~~ Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), or to an accredited investor ~~as defined by Rule 501 of Regulation D of the Securities Act Rules~~, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(4) The commission may establish by rule requirements and

standards for disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of viatical settlement investments.

Section 6. Present subsection (7) of section 517.081, Florida Statutes, is redesignated as subsection (6), a new subsection (7) is added to that section, and paragraphs (a), (g), and (n) of subsection (3) and subsections (5), (6), and (8) of that section are amended, to read:

517.081 Registration procedure.—

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

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is ~~be~~ a corporation, association, or trust.

2. All the managers or managing members, if the issuer is a limited liability company.

3. ~~; of~~ All the partners, if the issuer is ~~be~~ a partnership.

4. ~~; or of~~ The issuer, if the issuer is a sole proprietorship or natural person ~~be an individual~~.

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

2. The commission shall adopt a form for a simplified offering circular ~~to be used solely by corporations~~ to register, under this section, securities ~~of the corporation~~ that are sold

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in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

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

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

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

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

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

f. Any issuer that ~~corporation which~~ has failed to provide

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the office the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, an issuer ~~a corporation~~ shall agree to provide the office 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, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office 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.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability company, there shall be filed with the application a copy of the articles of organization with all the amendments and a copy of the company's operating agreement, if not already on file with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association

and all other papers pertaining to its organization, if not already on file in the office.

(5) ~~The commission may by rule fix the maximum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.~~

~~(6)~~ An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of $1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or $200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(7) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application as specified by commission rule.

~~(8) The commission may by rule establish requirements and standards for:~~

~~(a) Disclosures to purchasers of viatical settlement investments.~~

~~(b) Recordkeeping requirements for sellers of viatical settlement investments.~~

Section 7. Section 517.082, Florida Statutes, is amended to read:

517.082 ~~Notification~~ Registration by notification; federal registration statements.—

(1) ~~Except as provided in subsection (3),~~ Securities

offered or sold pursuant to a registration statement filed under the Securities Act of 1933, as amended, are ~~shall be~~ entitled to registration by notification in the manner provided in subsection (2), provided that before ~~prior to~~ the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by all of the following:

(a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold.~~;~~

(b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission may by rule require.~~;~~

(c) An irrevocable written consent to service as required by s. 517.101.~~; and~~

(d) A nonreturnable fee of $1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933, as amended, or the Investment Company Act of 1940, as amended, within 10 business days after ~~from~~ the date federal registration

is granted. Failure to provide all the information required by this subsection to the office within 60 days after ~~of~~ the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) ~~Except for units of limited partnership interests or such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is $5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934 or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.~~

~~(4)~~ In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

(4) If the Securities and Exchange Commission has not declared effective the applicant's federal registration statement within 180 days after the applicant's filing with the office of an application for registration by notification, the office must deem the application abandoned.

Section 8. Subsections (1) through (4) of section 517.111,

Florida Statutes, are amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The office may revoke or suspend the registration of any security, or may deny any application to register securities, if, upon examination or investigation into the affairs of the issuer of such security, it appears ~~shall appear~~ that:

(a) The issuer cannot pay its debts as they become due in the usual course of business ~~is insolvent~~;

(b) The issuer or any officer, director, manager or managing member, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office of which such issuer has notice;

(c) The issuer or any officer, director, manager or managing member, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, manager or managing member, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, manager or managing member, or control person of the issuer has had a final judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, manager or managing member, or control person of the issuer has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1) ~~demonstrated any evidence of unworthiness~~;

(g) The issuer or any officer, director, manager or managing member, or control person of the issuer ~~is in any other way dishonest or~~ has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security; or

(i) For any security for which registration has been applied pursuant to s. 517.081, the terms of the offer or sale of such securities would not be fair, just, or equitable~~; or~~

~~(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the office pursuant to the provisions of s. 517.081 or s. 517.082 or any rule adopted under such sections~~.

In making such examination or investigation, the office shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also

require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the office deems it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the office may require.

(2) If any issuer refuses ~~shall refuse~~ to permit an examination or investigation to be made by the office, it shall be proper ground for revocation of registration.

(3) If the office deems it necessary, it may enter an order suspending the right to sell securities pending any examination or investigation, provided that the order shall state the office's grounds for taking such action.

(4) Notice of the entry of such order shall be given personally or by mail~~, personally, by telephone confirmed in writing, or by telegraph~~ to the issuer. Before such order is made final, the issuer ~~applying for registration~~ shall, on application, be entitled to a hearing.

Section 9. Subsections (1), (2), and (3), paragraph (b) of subsection (6), subsections (7) and (11), paragraph (b) of subsection (15), and subsections (20) and (21) of section 517.12, Florida Statutes, are amended to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1)(a) A person may not ~~No dealer, associated person, or issuer of securities shall~~ sell or offer for sale any securities in or from offices in this state~~,~~ or sell securities to persons in this state from offices outside this state, by mail or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

otherwise, unless the person is ~~has been~~ registered with the office as a Tier I dealer or as an associated person of a Tier I dealer pursuant to ~~the provisions of~~ this section. ~~The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.~~

(b) A person may not, for direct or indirect compensation, introduce or refer one or more accredited investors to an issuer or introduce or refer an issuer to one or more accredited investors for the purpose of a potential offer or sale of securities in an issuer transaction in this state unless the person is registered with the office as a Tier I dealer or Tier II dealer or as an associated person of a Tier I dealer or Tier II dealer pursuant to this section.

(c) The office may not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

(2) ~~The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).~~

~~(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19),~~ The registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(10) and (12) ~~s. 517.061(1)-(12), (14), and (15)~~.

(5)~~(6)~~ A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(b) The applicant's form and place of organization; and, if the applicant is:

1. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

2. A limited liability company, a copy of its articles of organization with amendments to its articles; or

3. ~~, if~~ A partnership, a copy of the partnership agreement.

(6)~~(7)~~ The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any control person of ~~directly or indirectly controlling~~ the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~ shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall

be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's ~~His or her~~ full name, and any other names by which the applicant or person ~~he or she~~ may have been known, and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

(10)(a) ~~(11)(a)~~ If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its ~~his or her~~ registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or

associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (9)(a) ~~(10)(a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

(14) ~~(15)~~

(b) In lieu of filing with the office the applications specified in subsection (5) ~~(6)~~, the fees required by subsection

(9) ~~(10)~~, the renewals required by subsection (10) ~~(11)~~, and the termination notices required by subsection (11) ~~(12)~~, the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(19)~~(20)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation

and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of organization and amendments to the articles and a copy of the company's operating agreement; or

c. ~~, if~~ A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any control person of ~~persons directly or indirectly controlling~~ the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or

indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's ~~His or her~~ full name and any other names by which the applicant or person ~~he or she~~ may have been known and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, ~~or small loan companies,~~ real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's ~~his or her~~ commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange

Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests ~~shares~~ of the intermediary is subject to this requirement.

(e) If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(20) ~~(21)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as

defined in s. 517.021(28)(g) ~~s. 517.021(22)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 10. Section 517.1214, Florida Statutes, is created to read:

517.1214 Continuing education requirements for associated persons of investment advisers and federal covered advisers.—

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

(a) "Approved continuing education content" means the materials, written, oral, or otherwise, which have been approved by NASAA or its designee and which make up the educational program provided to an associated person under this section.

(b) "Credit" means a unit designated by NASAA or its designee as at least 50 minutes of educational instruction.

(c) "Home state" means the state in which an associated person of an investment adviser or a federal covered adviser has his or her principal office and place of business.

(d) "NASAA" means the North American Securities Administrators Association, Inc.

(e) "Reporting period" means one 12-month period beginning January 1 and ending December 31. An associated person's initial reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(2) By December 31, 2024, and each December 31 thereafter,

each associated person of an investment adviser or a federal covered adviser shall complete the following continuing education content requirements offered by a person that NASAA or its designee has authorized to provide the continuing education content required by this section:

(a) Six credits of approved continuing education content that addresses an associated person's ethical and regulatory obligations, with at least 3 hours covering the topic of ethics; and

(b) Six credits of approved continuing education content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(3) An associated person of an investment adviser or federal covered adviser who is also registered as an associated person of a Financial Industry Regulatory Authority (FINRA) member dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this section's products and practice requirement for each applicable reporting period, provided that the FINRA continuing education content is approved continuing education content.

(4) Credits of continuing education completed by an associated person who was awarded and currently holds a credential that qualifies for examination waiver by passing any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934, as amended, comply with paragraphs (2)(a) and (b), provided all of the following conditions are met:

(a) The associated person completes the credits of continuing education as a condition of maintaining the

credential for the relevant reporting period.

(b) The credits of continuing education completed during the relevant reporting period by the associated person are mandatory to maintain the credential.

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved continuing education content.

(5) Each associated person is responsible for ensuring that the authorized provider reports the associated person's completion of the applicable continuing education requirements.

(6) An associated person who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(7) An associated person who fails to comply with this section by the end of a reporting period shall renew as "CE inactive" at the close of the calendar year in this state until the associated person completes and reports all required continuing education credits for all reporting periods as required by this section. An associated person who is CE inactive at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration.

(8) An associated person registered or required to be registered in this state who is registered as an associated person of an investment adviser or federal covered adviser in the individual's home state is considered to be in compliance with this section if:

(a) The associated person's home state has a continuing

education requirement of at least 12 hours annually; and

(b) The associated person is in compliance with the home state's associated person of an investment adviser or federal covered adviser continuing education requirements.

(9) An associated person who was previously registered under s. 517.12 and became unregistered must complete continuing education for all reporting periods that occurred between the time that the associated person became unregistered and when the person became registered again under s. 517.12, unless the associated person takes and passes the required examinations or the examination requirements are waived in connection with the subsequent application for registration.

Section 11. Section 517.1217, Florida Statutes, is amended to read:

517.1217 Rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries.—

(1) The commission by rule may establish rules of conduct and prohibited business practices for Tier I dealers and their associated persons and for intermediaries. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the ~~United States~~ Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

(2) Concurrently with each introduction, a Tier II dealer shall obtain the informed consent of each prospective investor

introduced or referred by the Tier II dealer to an issuer in a written agreement signed by the Tier II dealer, the issuer, and the prospective investor and initialed by the prospective investor next to each paragraph, disclosing all of the following:

(a) The type and amount of compensation that has been or will be paid to the Tier II dealer in connection with the introduction or referral and the conditions for payment of that compensation.

(b) That neither the Tier II dealer nor its associated persons are providing advice to the issuer or the prospective investor as to the value of the securities being offered or sold or as to the advisability of investing in, purchasing, or selling the securities being offered or sold.

(c) Whether the Tier II dealer or any of its associated persons are also owners, directly or indirectly, of the securities being offered or sold.

(d) Any actual or potential conflict of interest in connection with the Tier II dealer's or associated person's activities related to the issuer transaction.

(e) That the parties to the agreement have the right to pursue any available remedies at law or otherwise for any breach of the agreement.

To satisfy the requirements of this subsection, the agreement must also include a representation by the prospective investor that the prospective investor is an accredited investor and that the prospective investor knowingly consents to the payment of the compensation described in the agreement.

(3) A Tier II dealer or associated person may not:

(a) Introduce or refer an accredited investor to an issuer or introduce or refer an issuer to an accredited investor unless the issuer's principal place of business is in this state.

(b) Participate in negotiating any of the terms of the offer or sale of the securities being offered or sold.

(c) Advise any party to the transaction regarding the value of the securities being offered or sold or the advisability of investing in, purchasing, or selling the securities being offered or sold.

(d) Conduct any due diligence on the part of any party to the transaction.

(e) Sell or offer for sale, in connection with the issuer transaction, any securities of the issuer which are owned, directly or indirectly, by the Tier II dealer or associated person.

(f) Receive, directly or indirectly, possession or custody of any funds in connection with the issuer transaction.

(g) Knowingly receive compensation in connection with any offer or sale of securities unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a federal covered security, or is registered under this chapter.

(h) Make any disclosure to a prospective investor other than the following:

1. The name and address of, and the contact information for, the issuer or a dealer representing the issuer.

2. The name, type, price, and aggregate amount of any securities being offered in the issuer transaction.

3. The issuer's industry, location, and number of years in

business.

4. Written disclosure documents obtained from the issuer.

(4) The commission may by rule establish rules of conduct and prohibited business practices for Tier II dealers and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 12. Subsections (1), (4), and (5) of section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any control person of ~~directly or indirectly controlling~~ the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of

securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer~~, broker,~~ or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering for sale securities through any associated person not registered in compliance with ~~the provisions of~~ this chapter;

(h) ~~Has demonstrated unworthiness to transact the business of dealer, investment adviser, intermediary, or associated person;~~

~~(i)~~ Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, intermediary, or investment adviser, unable to pay its debts as they become due in the usual course of business ~~insolvent~~;

(i) ~~(j)~~ Has been convicted of, or has entered a plea of

guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(j) ~~(k)~~ Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

~~(l) Is of bad business repute;~~

(k) ~~(m)~~ Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance ~~or small loan companies~~, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has

been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; ~~or~~

(l) ~~(n)~~ Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution;

(m) Failed to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer, or associated person complies with the terms of the alternative payment arrangements;

(n) Attempted to avoid payment of any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer, or associated person complies with the terms of the alternative payment arrangements; or

(o) Failed to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser,

dealer, or associated person by the Securities and Exchange Commission, the securities regulator or other financial services regulator of any state or province, or any securities industry self-regulatory organization.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, limited liability company, or unincorporated association, if any member of the partnership, any manager or managing member of the limited liability company, or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act that ~~which~~ would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

Section 13. Subsection (2) of section 517.1611, Florida Statutes, is amended to read:

517.1611 Guidelines.—

(2) The commission shall adopt by rule disqualifying periods pursuant to which an applicant will be disqualified from eligibility for registration based upon criminal convictions, pleas of nolo contendere, or pleas of guilt, regardless of whether adjudication was withheld, by the applicant; any partner, member, officer, or director of the applicant or any person having a similar status or performing similar functions; or any control person of ~~directly or indirectly controlling~~ the applicant.

(a) The disqualifying periods shall be 15 years for a felony and 5 years for a misdemeanor.

(b) The disqualifying periods shall be related to crimes involving registration as a dealer, investment adviser, issuer of securities, or associated person or the application for such registration or involving moral turpitude or fraudulent or dishonest dealing.

(c) The rules may also address mitigating factors, an additional waiting period based upon dates of imprisonment or community supervision, an additional waiting period based upon commitment of multiple crimes, and other factors reasonably related to the consideration of an applicant's criminal history.

(d) An applicant is not eligible for registration until the expiration of the disqualifying period set by rule. Section 112.011 does not apply to the registration provisions under this chapter. Nothing in this section changes or amends the grounds for denial under s. 517.161.

Section 14. Section 517.181, Florida Statutes, is repealed.

Section 15. Subsection (4) of section 517.191, Florida

Statutes, is amended to read:

517.191 Injunction to restrain violations; civil penalties; enforcement by Attorney General.—

(4)(a) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court shall have jurisdiction to impose, a civil penalty against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed $10,000 for a natural person or $25,000 for any other person, or the gross amount of any pecuniary gain to such defendant for each such violation other than a violation of s. 517.301 plus $50,000 for a natural person or $250,000 for any other person, or the gross amount of any pecuniary gain to such defendant for each violation of s. 517.301. All civil penalties collected pursuant to this subsection shall be deposited into the Anti-Fraud Trust Fund. The office may recover any costs and attorney fees related to the office's investigation or enforcement of this section. Notwithstanding any other law, moneys recovered by the office for costs and attorney fees collected pursuant to this subsection must be deposited into the Anti-Fraud Trust Fund.

(b) A control person of a controlled person found to have violated any provision of this chapter or any rule adopted under any provision of this chapter is jointly and severally liable with, and to the same extent as, such controlled person in any action brought by the office under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or

indirectly induce the act that constitutes the violation or cause of action. For purposes of any action brought by the office under this section, a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter or of any rule adopted under any provision of this chapter is deemed to violate the provision or the rule to the same extent as the person to whom such assistance is provided.

Section 16. Paragraph (a) of subsection (4) of section 517.201, Florida Statutes, is amended to read:

517.201 Investigations; examinations; subpoenas; hearings; witnesses.—

(4)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office pursuant to this section, the office may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution ~~in or from offices in this state~~ of securities or investments in or from this state by the noncompliant ~~a~~ person or its agent, employee, broker, partner, officer, director, manager, managing member, control person, or equity holder ~~stockholder thereof~~, and may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other

disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office has completed its investigation or examination. The office is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

Section 17. Paragraph (d) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer or~~,~~ associated person of a dealer~~, or issuer~~ of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.

784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

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787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or

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		other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.

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810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of

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		personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.
836.14(3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.

837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc.,

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		witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
951.22(1)(h),	3rd	Intoxicating drug,

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(j) & (k) instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 18. Subsection (9) of section 517.051, Florida Statutes, is amended to read:

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

(9) 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 corporation 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, as amended; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the

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commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall not preempt any provision of this chapter.

Section 19. Section 517.1215, Florida Statutes, is amended to read:

517.1215 Requirements, rules of conduct, and prohibited business practices for investment advisers ~~advisors~~ and their associated persons.—

(1) The commission shall specify by rule requirements for investment advisers ~~advisors~~ deemed to have custody of client funds which concern the following:

(a) Notification of custody of, maintenance of, and safeguards for client funds.

(b) Communications with clients and independent representatives.

(c) Requirements for investment advisers who have custody of pooled investments.

(d) Exceptions to the custody requirements.

In adopting the rules, the commission shall consider the rules and regulations of the federal regulatory authority and the North American Securities Administrators Association, Inc.

(2) The commission shall by rule establish rules of conduct

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and prohibited business practices for investment advisers and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 20. Subsection (1) of section 517.075, Florida Statutes, is amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(1) Any issuer of securities that will be sold in this state pursuant to a prospectus must disclose in the prospectus if the issuer or any affiliate thereof~~, as defined in s. 517.021(1),~~ does business with the government of Cuba or with any person or affiliate located in Cuba. The prospectus disclosure required by this subsection does not apply with respect to prospectuses prepared before April 10, 1992.

Section 21. Paragraph (a) of subsection (1) of section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for associated persons shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

Section 22. Subsection (1) of section 517.211, Florida Statutes, is amended to read:

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) ~~(4), (5), (9), (11), (13), (16), or (18)~~ may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(12) ~~s. 517.12(13)~~ relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or 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. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the

security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 23. Section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(1) The office shall transfer the amount of fees required to be deposited into the Securities Guaranty Fund pursuant to s. 517.131.~~;~~

(2) After the transfer required in subsection (1), the office shall transfer the $50 assessment fee collected from each associated person under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ and 30.44 percent of the $100 assessment fee paid by dealers and investment advisers ~~advisors~~ for each office in the state under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ to the Regulatory Trust Fund.~~; and~~

(3) All remaining fees shall be deposited into the General Revenue Fund.

Section 24. Subsection (5) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(5) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(a) On behalf of a viatical settlement provider, viatical

settlement broker, life agent, or person engaged in the business of viatical settlements;

(b) In connection with a viatical settlement investment as defined in s. 517.021~~, pursuant to s. 517.021(24)~~; or

(c) On residents of this state in connection with a viatical settlement contract or viatical settlement investment.

Section 25. Subsection (6) of section 744.351, Florida Statutes, is amended to read:

744.351 Bond of guardian.—

(6) When it is expedient in the judgment of any court having jurisdiction of any guardianship property, because the size of the bond required of the guardian is burdensome, or for other cause, the court may order, in lieu of a bond or in addition to a lesser bond, that the guardian place all or part of the property of the ward in a designated financial institution under the same conditions and limitations as are contained in s. 69.031. A designated financial institution shall also include a dealer~~,~~ as defined in s. 517.021 ~~s. 517.021(6),~~ if the dealer is a member of the Security Investment Protection Corporation and is doing business in the state.

Section 26. This act shall take effect October 1, 2023.

3/29/2023
Meeting Date

Banking & Insurance
Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

180
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ash Mason

Phone

Address
Street

Email Ash.Mason@FLOFR.GOV

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
OFFICE OF Financial Regulation

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 180
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 2 Amendment 491330 adopted Gruters			
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
X		Ingoglia						
X		Mayfield						
X		Powell						
X		Thompson						
X		Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
11	0	**TOTALS**	FAV	-	RCS	-		
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 302
INTRODUCER:	Banking and Insurance Committee and Senator Grall
SUBJECT:	Government and Corporate Activism
DATE:	March 29, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	**Fav/CS**
2.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Senate Bill 302 addresses the provision of products and services by financial institutions, the investment of certain state and local government funds, the issuance of environmental, social, and governance (ESG) bonds, and procurement of and contracting with vendor's by certain state and local entities and educational institutions.

Financial Institutions

The bill requires financial institutions, consumer finance lenders, and money services businesses, to make decisions about the provision or denial of services based on an analysis of risk factors unique to each customer, and prohibits them from engaging in any "unsafe and unsound practice" or applying a "social credit score" when making determinations about the provision of services. Upon application or renewal, such entities to attest must attest to compliance with these provisions. They are subject to penalties and sanctions for violating any of these provisions.

Government Investments

The bill codifies and expands the program adopted by the State Board of Administration last year that requires, with limited exceptions, investments of certain state and local funds to be based solely on pecuniary factors and not on the furtherance of any social, political, or ideological interests. The expansion applies to all funds of state Treasury, all local government retirement plans, investments of local government surplus funds, and investment of funds raised by citizen support or direct-support organizations. The bill prohibits the person or entity responsible for

making investment decisions from subordinating the interests of the beneficiaries to other objectives, and requires the weight given to any pecuniary factor to appropriately reflect a prudent assessment of its impact on risk or returns. Investment policies are required to be updated to incorporate these requirements.

State and local retirement systems must report compliance with these requirements on a biennial basis, and provides the Attorney General with authority to seek an injunction against any violators.

Investment managers who invest public funds on behalf of state and local funds must include a specified disclaimer in certain external communications that discuss social, political, or ideological interests. On or after July 1, 2023, contracts with investment managers may be unilaterally terminated in certain circumstances. Investment managers are subject to sanctions if they fail to comply with the new provisions under the bill.

Bond Financing

The bill prohibits specified state and local issuers from:

- Issuing ESG bonds;
- Expending public funds or use money derived from the issuance of bonds to pay a third-party verifier to certify or verify that bonds may be designated or labeled as ESG bonds;
- Entering into a contract with any rating agency whose ESG scores would have a direct, negative impact on the issuer's bond ratings.

The bill applies to any bonds issued or to any agreement entered into or any contract executed on or after July 1, 2023.

Procurement and Contracting with Vendors

Beginning July 1, 2023, certain state and local government entities, and educational institutions, are prohibited from giving preference to a vendor based on the vendor's social, political, or ideological interests when procuring or contracting with them. Such entities may not request documentation relating to a vendor's social, political, or ideological interests, and any solicitation for purchases or leases must notify vendors of these provisions.

The bill reenacts ss. 17.61 and 215.44, F.S.

See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Environmental, social, and governance (ESG) are non-financial risks that are used by some institutions and investment managers when making investment decisions. Examples of environmental factors include greenhouse gases and air or water and ground pollution emissions. Social practices considered include product liabilities, supply chain labor, and health and safety

standards. Governance factors include shareholder rights, board diversity, executive compensation, and corporate board behavior such as anti-competitive practices and corruption.[1]

JP Morgan reports that over $500 billion flowed into ESG-integrated funds in 2021.[2] According to Broadridge Financial Solutions, ESG assets are forecasted to exceed $30 trillion by 2030.[3]

Financial Institutions

Dual Oversight of Depository Institutions

An institution must have a federal or state charter to accept deposits. Banks are chartered and regulated as national banks by the Office of the Comptroller of the Currency within the U.S. Department of the Treasury or as state banks by a state regulator.[4]

The Florida Financial Institutions Codes apply to all state-authorized or state-chartered financial banks, trust companies, credit unions and related entities.[5] The Office of Financial Regulation (OFR) licenses and regulates 197 financial entities, including 69 state-chartered banks and 66 state-chartered credit unions.[6] There are also 33 federally-chartered banks and 63 federally chartered credit unions operating in Florida.[7]

Due to federal preemptions, a state's regulatory powers in relation to federally chartered institutions is limited. However, the state may exercise powers within their exceptions to exclusive federal visitorial authority. Such exceptions are those recognized by federal law and courts of law or created by the U.S. Congress.[8]

Once a financial institution obtains a charter, one of the regulator's primary task is to ensure solvency which is achieved by conducting financial exams of its licensed entities. Financial institutions also need approval from their regulator to make changes in their upper management, merge with another company, pay dividends to shareholders, engage in material transactions with subsidiaries and affiliates, or make significant changes to their business operations.[9]

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[1] Deloitte, *#1 What is ESG?*, available at: #1 What is ESG? (deloitte.com) (last visited Mar. 26, 2023).
[2] Wu, J., *Five Reasons Why the Future of ESG Investing is Long Term*, JP Morgan, Jan. 1, 2022, available at: ESG Outlook 2022: The future of ESG investing | J.P. Morgan Asset Management | J.P. Morgan Asset Management (jpmorgan.com) (last visited Mar. 26, 2023).
[3] Green, A., *The Future of ESG Investing*, Forbes, Feb. 16, 2022, available at: The Future Of ESG Investing (forbes.com) (last visited Mar. 26, 2023).
[4] Congressional Research Service, *Introduction to Financial Services: Banking*, p. 1, Jan. 5, 2023, available at: https://crsreports.congress.gov/product/pdf/IF/IF10035 (last visited Mar. 26, 2023).
[5] Section 655.005(1)(k), F.S., states that the Financial Institutions Codes includes: Ch. 655, financial institutions generally; Ch. 657, credit unions; Ch. 658, banks and trust companies; Ch. 660, trust business; Ch. 662, family trust companies; Ch. 663, international banking; Ch. 665, relating to associations; and Ch. 667, savings banks.
[6] Office of Financial Regulation, *Fast Facts* (2021 ed.), available at: FastFacts.pdf (flofr.gov) (last visited Mar. 26, 2023).
[7] *Id*.
[8] 12 C.F.R. § 7.4000 (2011).
[9] For a detailed discussion of the regulatory framework, see, Congressional Research Service, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, March 10, 2020, available at: https://crsreports.congress.gov/product/pdf/R/R44918/7 (last visited Feb. 13, 2023). Also see ss. 655.037, 655.0385, 655.0386, 655.03855, and 655.412, F.S.

Banks chartered by OFR must become ~~a~~ members of the Federal Reserve or obtain insurance from the Federal Deposit Insurance Corporation.[10] Credit Unions chartered by OFR must insure their accounts by becoming a member of the National Credit Union Administration.[11] Thus, state-chartered banks and credit unions are subject to a dual-regulatory system.

OFR must examine the condition of each state-chartered financial institution at least every 18 months, and may conduct more frequent examinations as needed, based on risks associated with a licensee, such as prior examination results or significant operational changes.[12] When a state-chartered financial institution also has a federal regulator, OFR may accept an examination performed by the federal regulator or the regulators may conduct a joint examination.[13]

Financial institutions that become insolvent are liquidated by their primary regulator.[14]

Authority of OFR

OFR may impose administrative sanctions on financial institutions subject to the Florida Financial Institutions Codes that engage in an "unsafe or unsound practice." This term is defined at s. 655.005(1)(y), F.S., which states:

> "Unsafe or unsound practice" means any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.

Possible penalties include: issuance of a cease and desist order,[15] removal of an institution-affiliated party,[16] administrative fines,[17] and a court-ordered injunction to restrain conduct that violates a formal enforcement action.[18] When imposing a sanction or requiring a remedy, OFR must consider "the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require."[19]

[10] Sections 658.22 and 658.38, F.S.
[11] Sections 657.005 and 657.008, F.S.
[12] Section 655.045(1), F.S.
[13] Section 655.045(1)(a), F.S.
[14] Sections 657.063, 657.064, 658.83, and 660.48, F.S.
[15] Section 655.033, F.S.
[16] Section 655.037, F.S.
[17] Section 655.041, F.S.
[18] Section 655.034, F.S.
[19] Section 655.031(1), F.S.

OFR may impose monetary fines if a licensee violates a provision of the financial institutions codes or associated rules, an order of the office, or a written agreement with the office.[20] In general, administrative fines may not exceed $2,500 per day for each violation.[21] Larger fines are allowed in the following circumstances:

- Up to $10,000 per day for each reckless violation that result in more than a minimal loss to a financial institution or pecuniary benefit to the person liable for the violation;[22]
- Up to the lesser of $500,000 per day or 1 percent of the total assets in the case of a financial institution, or $50,000 per day in any other case, for knowing violations that result in more than a minimal loss to a financial institution or pecuniary benefit to the person liable for the violation;[23] and
- Up to $10,000 per day for any financial institution that refuses to permit an examination.[24]

Criminal violations – like embezzlement and fraud – may be prosecuted under the penal code.[25]

OFR has authority to monitor state-chartered banks, to ensure compliance with state and federal laws, and may enforce state consumer protection laws on federally chartered banks operating within their boundaries so long as the state law is not pre-empted by federal law.[26] Federal pre-emption permits federally chartered banks and savings associations to operate under a uniform set of rules when they operate across state lines.[27]

When a state chartered financial institution encounters a competitive disadvantage caused by state law in relation to the capacities and powers allowed to federally chartered institutions, OFR may issue an order or a rule waiving the state law causing the competitive imbalance.[28]

Non-Depository Financial Institutions

Consumer finance lenders and money services businesses are non-depository lenders that profit from fees charged on such loans or transactions. OFR has regulatory authority over consumer finance lenders that offer consumers finance products or services.[29] Consumer finance lenders are required to obtain a license from OFR that must be renewed every two years to conduct

[20] Section 655.041, F.S.
[21] Section 655.041(2), F.S.
[22] Section 655.041(2)(a), F.S.
[23] Section 655.041(2)(b), F.S.
[24] Section 655.041(2)(c), F.S. Rule 69U-100.0451, F.A.C, discusses fees that may be assessed to cover the costs of examinations.
[25] Section 655.0322, F.S.
[26] 12 U.S.C. 25b.
[27] U.S. Department of the Treasury, Office of the Comptroller of the Currency, *OCC Chief Counsel's Interpretation: 12 U.S.S. §25b*, Dec. 18, 2020, available at: https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-176a.pdf (last visited Mar. 26, 2023).
[28] Section 655.061, F.S.
[29] Section 516.01(2), F.S., defines "consumer finance loans" as a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.

business in Florida.[30] Each location of a consumer finance company must be licensed by OFR, even if the separate locations are part of the same business entity.[31]
Consumer finance lenders may make secured or unsecured loans of up to $25,000 at interest rates between 18 and 30 percent per year.[32] OFR investigates consumer complaints to ensure that consumer finance lenders are licensed to purchase or hold retail installment contracts and comply with fair lending laws.[33] Administrative sanctions for consumer finance lenders may include suspension or revocation of a license, a written reprimand, or a fine of up to $1,000 for each violation.[34] Certain violations, such as violating fair lending laws or operating without a license, may be prosecuted as a first-degree misdemeanor.[35]

OFR also has regulatory authority over money services businesses[36] that assist consumers in transacting instruments, transmitting money,[37] cashing checks,[38] and exchanging foreign currency.[39] Examples include check cashers like The Check Cashing Store,[40] money transmitters like PayPal,[41] and exchangers like Florida Currency Exchange.[42] Money services businesses also include "payday lenders" who offer short-term, high-interest loans that are due on the consumer's next pay day. Two types of payday loans are allowed in Florida:

- The lender provides cash in exchange for the borrower's check (up to $500) and agrees to hold the check for 7 to 31 days before cashing the check. Fees may not exceed 10 percent of the payment to the borrower plus a $5 verification fee.

[30] Section 516.02(1), F.S.
[31] Section 516.05, F.S.
[32] Section 516.02(2)(a), F.S.
[33] Sections 516.11, 516.15, 516.26, 516.31 and 516.35, F.S.
[34] Section 516.07(2), F.S. A first degree misdemeanor is punishable by up to one year in imprisonment or a $1,000 fine as provide in s. 775.082, F.S., or s. 775.083, F.S.
[35] Section 516.19, F.S.
[36] Section 560.103(23), F.S., defines "money services businesses" as any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.
[37] Section 560.105, F.S. Section 560.103(24), F.S., defines "money transmitter" as a corporation, limited liability corporation, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a payment instrument, or virtual currency for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.
[38] Section 560.103(6), F.S., defines "check casher" as a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.103(29), F.S., defines "payment instrument" as a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency or monetary value, regardless of whether it is negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.
[39] Section 560.103(18), F.S., defines "foreign currency exchanger" as a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government.
[40] The Check Cashing Store, *Home*, available at: The Check Cashing Store®: Check Cashing, Mobile Check Cashing, Loans, Personal and Small Business services, Money Orders, Pre Paid Debit Cards, and Western Union Money Transfers (last visited Mar. 26, 2023).
[41] PayPal, *Home*, available at: Digital Wallets, Money Management, and More | PayPal US (last visited Mar. 26, 2023).
[42] Florida Currency Exchange, *Home*, available at: Florida, Texas, Utah Currency Exchange | Foreign Currency Exchange (flcurrencyexchange.com) (last visited Mar. 26, 2023).

- The lender provides cash in exchange for the borrower's check (up to $1,000) and the borrower repays the loan in installments. The term of the loan is 60-90 days. The lender may charge a $5 verification fee and 8 percent of the balance on a biweekly basis.[43]

Money services businesses must maintain accounts in permissible investments that equals at least the amount of all outstanding money transmissions and payment instruments sold by the licensee or an authorized vendor.[44,45] OFR also monitors the check cashing practices of money services businesses to verify corporate records, determine compliance with workers' compensation laws,[46] and to ensure compliance with fair debt collection laws.[47] Administrative sanctions for money services businesses may include issuance of a Cease and Desist Order, removal of an Institution-Affiliated Party, suspension or revocation of a license, an injunction, or a fine of at least $1,000 but not more than $10,000 for each violation.[48] Money laundering may be prosecuted under state or federal law.[49]

Qualified Public Depositories

Unless a specific exemption applies, state and local governments must deposit public funds in a bank or savings association that has been designated as a qualified public depository (QPD) under the Florida Security for Public Deposits Act.[50]

To be designated as a QPD by the CFO, a bank, savings bank, or savings association must:

- Have authority to accept deposits because it has been chartered and regulated by the state or federal government;
- Have its principal place of business in Florida, or a branch office in Florida;
- Have deposit insurance pursuant to the Federal Deposit Insurance Act;[51]
- Have procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits; and
- Meet all the requirements of ch. 280, F.S., relating to security for public deposits.[52]

QPDs must secure public deposits with a pledge of eligible collateral, to protect the deposit against losses that could occur in the event of insolvency or default.[53] The amount collateral required is based on statutory guidelines and the QPD's overall financial condition.[54]

[43] Section 560.404, F.S.
[44] Section 560.103(3), F.S., defines "authorized vendor" as a person designated by a money services business licensed under part II of ch. 560, F.S., to act on behalf of the licensee at locations in Florida pursuant to a written contract with the licensee.
[45] Section 560.210, F.S.
[46] Section 560.310(5)(b), F.S.
[47] Section 560.309, F.S.
[48] Sections 560.114 and 560.113, F.S.
[49] Sections 560.111 and 560.123, F.S
[50] Sections 280.01 and 280.03(1)(b), F.S. Certain public deposits, including those that are fully collateralized under other laws and moneys contributions to the state retirement system that are held in the System Trust Fund, are exempt pursuant to s. 280.03(3), F.S.
[51] 12 U.S.C. ss. 1811 et. seq.
[52] Section 280.02(26), F.S.
[53] Sections 280.04 and 280.041(6), F.S.
[54] Section 280.04, F.S., and Rule 69C-2.024, F.A.C.

Public deposits include, but are not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposits; they do not include moneys in deposit notes, securities, mutual funds, and similar investments.[55]

A bank or savings association must guaranty public depositors against losses caused by the default or insolvency of other QPDs.[56] Any shortfall that is not covered by the maximum federal deposit insurance of $250,000, the CFO must demand payment under letters of credit or the sale of pledged or deposited collateral by the defaulting depository. The CFO may assess QPDs for the total loss if the demand for payment or sale cannot be accomplished within 7 days.[57]

As of May 20, 2022, Florida had 118 authorized QPDs.[58] These QPDs include 23 of the 28 federally chartered banks and trusts that operate in Florida.[59]

Government Investments

State Board of Administration

The State Board of Administration (SBA) was created by the Florida Constitution and serves as the state's independent investment management organization, with authority over 30 funds collectively valued at about $228 billion as of June 30, 2022, including the state's pension and investment plans for public employees, which accounts for 79 percent of assets under management.[60] Other funds under management include the Florida Hurricane Catastrophe Fund, Department of the Lottery Fund, Florida Prepaid College and Florida College Investment Plan, FSU Research Foundation, Florida PRIME (surplus funds of local governments) and the Police and Firefighters' Premium Tax Trust Fund.[61] The Governor, Chief Financial Officer, and Attorney General serve as the SBA's Board of Trustees (Trustees), and delegate operational authority to an executive director and chief investment officer, who oversee about 200 employees.[62] A nine-member Investment Advisory Council provides guidance on investment policy and strategy.[63]

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[55] Section 280.02(23), F.S.
[56] Section 280.07, F.S.
[57] Section 280.08, F.S.
[58] Florida Department of Financial Services, Division of the Treasury, *List of Active QPDs*, May 20, 2022, available at: List of Active QPDs.xlsx (myfloridacfo.com) (last visited Mar. 26, 2023).
[59] U.S. Department of the Treasury, Office of the Comptroller of the Currency, *Financial Institution Lists*, available at: https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html (last visited Mar. 26, 2023).
[60] Art. IV, s. 4(e) Fla. Const. (1968); State Board of Administration, *Summary Overview of the State Board of Administration of Florida*, available at: https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217 (last visited Mar. 26, 2023); State Board of Administration, *Performance Report Month Ending June 30, 2022*, available at: https://www.sbafla.com/fsb/Portals/FSB/Content/Trustees/2022/June%202022%20Monthly%20Trustee%20Report.pdf?ver=2022-08-24-133206-397 (last visited Mar. 26, 2023).
[61] A full list of SBA-managed investment funds is available at https://www.sbafla.com/fsb/FundsWeManage.aspx (last visited Mar. 26, 2023).
[62] Section 215.44, F.S.; *Summary Overview of the State Board of Administration of Florida*, supra footnote 60.
[63] Section 215.444(2), F.S.

In August 2022, the Trustees directed the SBA to invest funds in a manner that prioritizes the highest return on investment, without consideration of social, political, or ideological interests.[64] A resolution adopted by the Trustees directed the SBA to amend the Investment Policy Statement (IPS) for the Florida Retirement System Defined Benefit Plan to require that investment decisions be based solely on pecuniary factors.[65] By law, the IPS must clearly state its investment objectives, identify the types of securities the plan may invest in, and the evaluation criteria that will be used to measure fund performance.[66] Investment managers who invest public funds on behalf of the board certify compliance with the IPS annually.[67] The resolution further states that the Trustees, when exercising shareholder rights, including the voting of proxies, may not subordinate the interests of the participants and beneficiaries to other objectives and may not sacrifice investment return or take on additional investment risk to promote non-pecuniary factors.[68]

In December 2021, the Trustees directed the SBA to reclaim proxy voting authority that had been given to large financial firms and provide additional guidance to employees who are responsible for proxy voting and investment decisions.[69] During fiscal year 2021, SBA staff cast votes at 10,174 companies in 76 countries, voting on ballot items including director elections, audit firm ratification, executive compensation plans, mergers and acquisitions, and a variety of other management and shareowner proposals.[70] Of all votes cast, 17.5 percent were "against" the recommendation of company management.[71]

State General Revenue and Trust Funds

The Chief Financial Officer (CFO) is responsible for the investment of state general revenue and trust funds.[72] Interest earnings are allocated to the general revenue fund, trust funds, and Special Purpose Investment accounts.[73] A five-member Treasury Investment Council provides guidance on investment policy and strategy.[74]

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[64] The State Board of Administration, *A Resolution Directing an Update to the Investment Policy Statement and Proxy Voting Policies for the Florida Retirement System Defined Benefit Plan, and Directing the Organization and Execution of an Internal Review*, Aug. 23, 2022, available at: ESG-Resolution-Final.pdf (flgov.com) last visited (Mar. 26, 2023).
[65] Office of the Governor, *Governor DeSantis Eliminates ESG Considerations from State Pension Investments*, Aug. 23, 2022, available at: https://www.flgov.com/2022/08/23/governor-ron-desantis-eliminates-esg-considerations-from-state-pension-investments/ (last visited Mar. 26, 2023).
[66] Section 215.475, F.S.
[67] Section 215.4755(1), F.S.
[68] Officer of the Governor, *Governor DeSantis Eliminates ESG Considerations from State Pension Investments*, supra footnote 64.
[69] Office of the Governor, *Governor Ron DeSantis Takes Action Against Communist China and Woke Corporations*, Dec. 20, 2021, available at: https://www.flgov.com/2021/12/20/governor-ron-desantis-takes-action-against-communist-china-and-woke-corporations/ (last visited Mar. 26, 2023).
[70] State Board of Administration, *2022 Corporate Governance Summary Report*, available at: 2020-2021_AIR.pdf (sbafla.com) (last visited Mar. 26, 2023).
[71] *Id*.
[72] Section 17.61, F.S. This includes funds of each state agency and of the judicial branch; and funds of all boards, associations, and entities created by the Florida Constitution or by law.
[73] Florida Department of Financial Services, Treasury Investment Pool, available at: https://www.myfloridacfo.com/division/treasury/treasury-investment-pool (last visited Mar. 26, 2023).
[74] *Id*.

Local Government Retirement Plans

The Department of Management Services (DMS) monitors and oversees 487 retirement plans of municipalities, special districts, and school boards, to ensure they are actuarially sound.[75] Local governments must adopt a written investment policy that is structured to maximize the financial return on investments and complies with the investment limitations that apply to funds managed by the SBA and to establish and maintain appropriate diversification of assets.[76] State law includes special requirements for police and firefighter retirement plans; investments for these trust funds are managed by the local board of trustees and are subject to similar investment policies applicable to state funds.[77]

Local Government Surplus Funds

There are several investment vehicles for surplus funds of local governments.[78]

The SBA manages Florida PRIME (the Local Government Surplus Funds Trust Fund), which invests surplus funds of 756 units of local government in accordance with the investment restrictions that apply to the investment of state funds.[79]

Two other investment pools were created by interlocal agreements.[80] The Florida Association of Counties and the Florida Court Clerks & Comptrollers created the Florida Local Government Investment Trust, which offers public entities the choice of two professionally managed investment funds.[81] The cities of Bradenton, Lauderhill, and Palatka created The Florida Municipal Investment Trust, which offers local governments the choice of a real estate portfolio, three equity portfolios, and six fixed income portfolios.[82]

Local government surplus funds must be invested consistent with the written investment plan adopted by a governing board or principal officer of the local government entity. In accordance with the written investment plan, local government entities may by resolution only invest surplus public funds in Florida PRIME, an intergovernmental investment pool, registered money market funds, interest bearing time deposits or savings accounts in qualified public depositories designated by the CFO, direct obligations of the U.S. Treasury, federal agencies and instrumentalities, rated or unrated bonds, notes, or instruments backed by Israel, or certain securities of investment companies or investment trusts.[83]

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[75] Florida Department of Management Services, *Florida Local Government Retirement Systems 2022 Annual Report*, available at: 2022_Local_Report.pdf (fl.gov) (last visited Mar. 26, 2023).
[76] Section 112.661, F.S.
[77] Sections 175.071 and 185.06, F.S.
[78] Section 218.403(11), F.S., states: "'Unit of local government' means any governmental entity within the state not part of state government and shall include, but not be limited to, the following and the officers thereof: any county, municipality, school district, special district, clerk of the circuit court, sheriff, property appraiser, tax collector, supervisor of elections, authority, board, public corporations, or any other political subdivision of the state."
[79] Section 218.405(16)(a), F.S. *Also see*, State Board of Administration, *Florida PRIME Monthly Summary Report*, available at: monthly_summary_report_01_31_23final.pdf (sbafla.com) (last visited Mar. 26, 2023).
[80] *See* sections 163.01, F.S. and 218.415, F.S.
[81] Florida Local Government Investment Trust, *About*, available at: About – Florida Local Government Investment Trust (floridatrustonline.com) (last visited Mar. 26, 2023).
[82] Florida League of Cities, *Florida Municipal Investment Trust*, available at: https://www.floridaleagueofcities.com/services/investments-(fmivt) (last visited Mar. 26, 2023).
[83] Section 218.415(16), F.S.

Citizen Support and Direct-support Organizations

Citizen support organizations (CSO) (such as the Florida Department of Environmental Protection (DEP) holds agreements with 97 CSOs) and direct-support organizations (DSO) (such as the DSO for the Statewide Council on Human Trafficking) are created to raise funds to support causes that are in the public interest and often enter into a contract with a government entity to define the terms of the organizations' support to that government entity.[84] By August 1 of each year, such organizations must submit annual reports describing their activities to the appropriate government agency.[85] By August 15 each year, each CSO and DSO must report to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability which must include a recommendation on whether to continue, terminate, or modify the agency's association with each organization.[86]

Bond Financing

State and local government entities issue bonds to finance public projects. Investors are paid tax-exempt interest during the lifetime of the bond and are repaid the face value of the bond upon maturity.

The Division of Bond Finance (which is administratively housed within the SBA) issues general obligation bonds, revenue bonds, and appropriation-based bonds on behalf of local governments and state agencies. General obligation bonds are secured by the taxing power of the bond issuer. The investor relies on the full faith and credit of the issuer, and the issuer can impose a tax on the public to repay the bond. Revenue bonds are backed by revenues that come from a specific source or revenue stream, like a local stadium or highway tolls. Interest rates are higher because these bonds depend on the success of the specific venture that is financed. Appropriation-based bonds are secured by a commitment of the state to pay the debt service on the bonds via annual appropriations of the Legislature.[87] The Governor, the Chief Financial Officer, and the Attorney General serve as the governing board of the Division of Bond Finance.[88]

Local governments may also issue bonds through the Florida League of Cities, investment banks or other financial firms.[89] In such cases, the local government must provide notice of proposed bond sales and detailed information about bonds that have been issued to the Division of Bond Finance, which serves as a clearinghouse for government bonds issued in Florida.[90] The local government also must provide adequate notice to the public about the cost of bond financing and the terms under which bonds are issued.[91]

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[84] *See* ss. 258.015 and 16.618(1), F.S.; DeCerchio, A., *Citizen Support Organization 2022 Annual Report*, the DEP, Aug. 12, 2022, available at: 8.12.22 2022 DEP Annual CSO Report FINAL.pdf (floridadep.gov) (last visited Mar. 26, 2023).
[85] Section 20.058(1), F.S.
[86] Section 20.058(3), F.S.
[87] Division of Bond Finance, *Bond Program Overview*, available at: *https://www.sbafla.com/bondfinance/Bond-Programs* (last visited Mar. 26, 2023).
[88] Section 215.62(1), F.S.
[89] *See* Florida League of Cities, Bond Issue Program, available at: https://www.floridaleagueofcities.com/services/loans/bond-issue-program (last visited Mar. 26, 2023).
[90] Sections 218.37 and 218.38, F.S.
[91] Sections 218.385, F.S.

The Division is issuing state revenue bonds totaling $24.3 million for the Florida International University Parking Facility, and recently issued state revenue bonds in the amounts of approximately $98.9 million, $76 million, and $174.6 million for the Department of Transportation (DOT) Seaport Investment Program, Florida Polytechnic University Dormitory, and DOT Turnpike, respectively.[92]

Procurement and Contracting with Vendors

The DMS sources and adopts contracts for the purchase, lease, or acquisition of goods and services frequently used by multiple state agencies, such as office supplies, vehicles, computers, and furniture.[93] The DMS has authority to remove vendors from its vendor list for failure to fulfill its contractual duties and may reinstate a vendor when it is satisfied that no further defaults will occur.[94] Agencies must purchase goods and contractual services from the agreements and state term contracts established by the DMS.[95]A competitive solicitation process set out in s. 287.057, F.S., must be used for the procurement of commodities or contractual services over a certain amount. Unless an exception applies, the procurement of certain contractual services in excess of a specified amount must include certain information, such as specifying scope of work and allowing for unilateral cancellation by the agency in some instances.[96]

School districts, Florida College System institutions, and state universities must to comply with State Board of Education laws and rules relating to purchases and leases.[97] Such entities must review the DMS purchasing agreements and state term contracts to determine whether there is an economic advantage to use them for nonacademic purchases.[98] School districts and Florida College System Institutions must adopt rules, and state universities must adopt regulations, that must be complied with when making purchases.[99]

III. Effect of Proposed Changes:

Financial Institutions

Section 25 adds the term "unsafe and unsound practice" to the section of the Florida Financial Institutions Codes that defines "unsafe or unsound practice" for banks, trust companies, and credit unions. **Sections 21 and 22** add the term "unsafe and unsound practice" to laws governing consumer finance loans and money services businesses. The definition in sections 21, 22, and 25 of the bill echoes the reference found to "unsafe or unsound practice" in section 14 of the bill relating to qualified public depositories, and states:

[92] Division of Bond Finance, *Bond Sales*, available at: Bond Sales (sbafla.com) (last visited Mar. 26, 2023).
[93] Section 287.042(1)(a), F.S.; The DMS, *State Contracts and Agreements*, available at: State Contracts and Agreements / State Purchasing / Business Operations / Florida Department of Management Services - DMS (myflorida.com) (last visited Mar. 26, 2023).
[94] Section 287.042(1)(b), F.S.
[95] Section 287.056(1), F.S.
[96] Section 287.058(1), F.S.
[97] Section 1010.04(1)(a) and (c), F.S.
[98] Section 1010.04(1)(b), F.S.
[99] Section 1010.04(2), F.S.

It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person, on the basis of:

- The person's political opinions, speech, or affiliations;
- The person's religious beliefs, exercise, or affiliations;
- Any other factor that is not a quantitative, impartial, and risk-based standard; or
- A social credit score.[100]

The bill states that financial institutions operating in Florida (such as banks, trust companies, and credit unions), consumer finance lenders and money services businesses, must make determinations about the provision or denial of services "based on an analysis of risk factors unique to each individual customer or member."

Upon application for a license or license renewal, financial institutions, consumer finance lenders, and money services businesses regulated by the OFR must provide an attestation stating that the financial institution's practices comply with the applicable requirements and limitations created by the bill.

Sections 21 to 23 and 25 provide that if a financial institution, consumer finance lender, or money services business licensed by OFR engages in an "unsafe or unsound practice" or fails to make the required attestation, the OFR may impose administrative penalties, including an order requiring corrective action, a financial penalty, and suspension or revocation of a license.

Sections 21, 22, and 25 provide that financial institutions, consumer finance lenders, and money services businesses licensed by OFR that engage in an "unsafe or unsound practice," have also violated the Florida Deceptive and Unfair Trade Practices Act. This makes banks, trust companies, credit unions, consumer finance lenders, and money service businesses subject to the enforcement actions identified in part II of chapter 501, F.S., which include civil actions brought by the Attorney General and criminal prosecution by a State Attorney in the appropriate judicial circuit. Civil actions may include an injunction, an action seeking damages, or a civil penalty up to $10,000 per violation.

[100] The bill provides that a "social credit score" includes, but is not limited to, using any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to: the person's political opinions, speech, or affiliations; the person's religious beliefs, religious exercise, or religious affiliations; the person's lawful ownership of a firearm; the person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition; the person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture; the person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking; the person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph; the person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

- Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;
- Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;
- Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or
- Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

The bill prohibits the waiver of state laws under by OFR and the Financial Services Commission in relation to unsafe and unsound business practices by financial institutions.[101]

Section 24 amends the definition of "unsafe or unsound practice" in the financial institutions code to include the definition of "unsafe and unsound practice" created in the bill.

Qualified Public Depositories

Section 14 amends the definition of a QPD to prohibit the CFO from qualifying a bank or savings association that engages in an "unsafe and unsound practice."

It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person, on the basis of:

- The person's political opinions, speech, or affiliations;
- The person's religious beliefs, exercise, or affiliations;
- Any other factor that is not a quantitative, impartial, and risk-based standard; or
- A social credit score.[102]

Section 15 provides that, beginning July 1, 2023, banks and savings associations must certify compliance with this requirement when filing an application to be designated or re-designated as a QPD. **Section 17** provides that failure to file the required attestation is grounds for suspension or disqualification of a QPD, and **Section 18** provides that failure to timely file the attestation is deemed a knowing and willful violation of the law.

Sections 16, 18, and 19 of the bill gives the CFO authority to verify the attestation and impose penalties if a QPD fails to timely file the attestation. The CFO can impose an administrative penalty, issue a cease and desist order to require compliance with the law, and suspend or revoke a QPD's qualification.

Section 16 provides that if the CFO determines that an affidavit is materially false, the CFO must report the finding to the Attorney General, who may bring a civil or administrative action against the QPD, and recover attorney fees and costs if the enforcement action is successful.

The bill does not give the CFO "visitorial powers" to inspect, examine, supervise, or regulate the affairs of federally-chartered banks or savings associations. Only the federal regulator has visitorial powers.[103]

The bill's QPD-related provisions are not preempted by federal law because the QPD program is a creature of Florida law, in which the federally chartered institutions voluntarily participate. To participate in the program, they must accept the conditions of QPD eligibility.

[101] The Financial Services Commission is the Governor, Attorney General, Commissioner of Agriculture, and Chief Financial Officer. The Commission is the agency head over OFR. Section 20.121(3), F.S.
[102] Supra, note 93.
[103] 12 U.S.C. 484 and 12 CFR § 7.400.

Investments

Sections 1 to 8 and 13 codifies and extends, except for prohibited investments in Cuba and Venezuela, the policy adopted by the SBA, requiring that all investment decisions relating to the state retirement system be based solely on pecuniary factors, to all funds managed by the SBA, all funds of the state Treasury, all local government retirement plans, investments of local government surplus funds, and investments of funds raised by CSOs and DSOs. Investment restrictions do not apply to individual member-directed investment accounts established as part of a defined contribution plan. Investment managers who invest public funds on behalf of any of these entities may not sacrifice investment return or take additional investment risk to promote any non-pecuniary factor.

The term "pecuniary factor" is defined as a factor that is expected "to have a material effect on the risk or return of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests." Further, the "weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns."

Section 9 amends the IPS to require that it comply with the new provision requiring investments be made based on pecuniary factors.

Section 3 and 4 requires that written investment policies and investment decisions of local government retirement systems to be based solely on pecuniary factors.

Section 3 to 7 require state and local retirement systems to report compliance with the law on a biennial basis, beginning December 15, 2023. Local government retirement plans must report to the DMS; the SBA, on behalf of the Florida Retirement System, must report to the Governor, the Attorney General, the CFO, and the Legislature. Reports must describe governance policies and standards for the exercise of shareholder rights. DMS is directed to report incidents of noncompliance to the Attorney General, who may seek an injunction against any agency violating the reporting provisions and recover attorney fees and costs when an enforcement action is successful.

Section 12 requires investment managers[104] who invest public funds[105] on behalf of a state or local government entity[106] to include a disclaimer in an external communication, if the communication is to a company in which the investment manager has invested public funds and discusses social, political, or ideological interests; subordinates the interests of the company's shareholders to the interests of another entity; or advocates for an entity other than the

[104] Section 12 of the bill defines "investment manager" as a private sector company that offers one or more investment products or services to a governmental entity and that has the discretionary investment authority for direct holdings.
[105] Section 12 of the bill defines "public funds" as all moneys under the jurisdiction of a governmental entity and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose, subject to investment.
[106] Section 12 of the bill defines "government entity" as a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, board, bureau, commission, authority, district, or agency thereof, or a public school, Florida College System institution, state university, or associated board.

company's shareholders. This applies to the investment of general revenue, surplus funds, trust funds, and retirement plans.

The required disclaimer must state: "The views and opinions expressed in this communication are those of the sender and do not necessarily reflect the views and opinions of the people of the state of Florida."

All contracts with investment managers executed, amended, or renewed on or after July 1, 2023, may be unilaterally terminated if certain communications of an investment manager include discussion of social, political, or ideological interests and omit the required disclaimer described above.

Section 10 provides that investment managers, who are required to certify compliance with the fiduciary standards set forth in the state's investment policy annually, would be subject to sanction if they fail to timely file the required certification or if they submit a certification that is materially false. The Attorney General may bring a civil or administrative action against such persons and recover attorney fees and costs when an enforcement action is successful.

Bond Financing

Section 11 provides that bond issuers are prohibited from issuing any ESG bond. An ESG bond is defined as any bond that has been designated or labeled as a bond that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting a generalized or global environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives. It includes bonds self-designated by the issuer as ESG-labeled bonds and those designated as ESG-labeled bonds by a third-party verifier. The reference to "generalized or global" has the effect that bond issuers may issue bonds for specific governmental environmental projects, but they are prohibited from being marketed as a generalized or global ESG bond.

The bill also prohibits paying for a third-party verifier[107] that certifies or verifies that a bond[108] may be designated or labeled as an ESG bond, renders opinions or produces a report on ESG compliance, among other ESG-related services. Issuers are also prohibited from contracting with a rating agency[109] whose ESG scores for the issuer will have a direct, negative impact on the issuer's bond ratings.

The following bond issuers are affected by the bill:

[107] Section 11 of the bill defines "third-party verifier" as any entity that contracts with an issuer to conduct an external review and independent assessment of proposed ESG bonds to ensure that such bonds may be designated or labeled as ESG bonds or will be used to finance a project that will comply with applicable ESG standards.
[108] The bill defines "bond" as any note, general obligation bond, revenue bond, special assessment bond, special obligation bond, private activity bond, certificate of participation, or other evidence of indebtedness or obligation, in either temporary or definitive form.
[109] Section 11 of the bill defines "rating agency" as any nationally recognized rating service or nationally recognized statistical rating organization.

- The Division of Bond Finance, acting on behalf of any entity;
- Any local government, educational entity, or entity of higher education,[110] or other political subdivision granted the power to issue bonds;
- Any public body corporate and politic authorized or created by general or special law and granted the power to issue bonds, including, but not limited to:
- Water and sewer districts created under ch. 153, F.S.,
- Health facilities authorities,[111]
- Industrial development authorities created under ch. 159, F.S.,
- Housing financing authorities,[112]
- Research and development authorities,[113]
- Legal or administrative entities created by interlocal agreement pursuant to s. 163.01(7), F.S.,
- Community redevelopment agencies,[114]
- Regional transportation authorities created under chapter 163, F.S.,
- Community development districts,[115]
- Educational facilities authorities,[116]
- The Higher Educational Facilities Financing Authority created pursuant to s. 243.53, F.S.,
- The Florida Development Finance Corporation created pursuant to s. 288.9604, F.S.,
- Port district or port authorities,[117]
- The South Florida Regional Transportation Authority created pursuant to s. 343.53, F.S.,
- The Central Florida Regional Transportation Authority created pursuant to s. 343.63, F.S.,
- The Tampa Bay Area Regional Transit Authority created pursuant to s. 343.92, F.S.,
- The Greater Miami Expressway Agency created pursuant to s. 348.0304, F.S.,
- The Tampa-Hillsborough County Expressway Authority created pursuant to s. 348.52, F.S.,
- The Central Florida Expressway Authority created pursuant to s. 348.753, F.S.,
- The Jacksonville Transportation Authority created pursuant to s. 349.03, F.S., and
- The Florida Housing Finance Corporation created pursuant to s. 420.504, F.S.

The bill provides that notwithstanding s. 655.0323, F.S., a financial institution may purchase and underwrite bonds issued by a governmental entity.

The bill expressly applies to bonds issued and agreements made and contracts executed on or after July 1, 2023.

Procurement and Contracting with Vendors

Sections 20 and 26 provide that state and local government entities, school districts, Florida College System institutions, and state universities are prohibited from considering social,

[110] As defined in s. 215.89(2)(c), (d), and (e), F.S.
[111] As defined in s. 154.205, F.S.
[112] As defined in s. 159.603(3), F.S.
[113] As defined in s. 159.702(1)(c), F.S.
[114] As defined in s. 163.340(1), F.S.
[115] As defined in s. 190.003, F.S.
[116] As defined in s. 243.52(1), F.S.
[117] As defined in s. 315.02(1) and (2), F.S.

political, or ideological beliefs in contracting and procuring commodities or contractual services. Section 20 explicitly notes that this includes all political subdivisions of the state. To do this, the bill creates a new section within ch. 287, F.S., which currently addresses contracting only at the state level.

An awarding body[118] and the specified educational institutions may not: 1) request documentation or consider a vendor's social, political, or ideological beliefs when determining if the vendor is a responsible vendor; or 2) give a preference to a vendor based on the vendor's social, political, or ideological beliefs.

Beginning July 1, 2023, all solicitations for commodities or contractual services must include notice of these requirements.

Sections 27 and 28 reenact ss. 17.61 and 215.44, F.S., for purposes of amendments made to ss. 17.57 and 215.47, F.S., respectively.

Section 29 provides the effective date is July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires local governments to make investments, issue bonds, conduct procurements, and provide reports in compliance with the provisions of the bill, which may be at some expense; however, an exemption may apply. The expenditures required to comply with the bill are estimated to be insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The provisions of the bill relating to contracts with investment managers and vendors are prospective. The bill refers to contracts that are solicited or awarded on or after July 1,

[118] Section 20 of the bill defines "awarding body" as (a) for state contracts, an agency or the department, and (b) for local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

2023. The bill does not modify or render unenforceable any contract that exists prior to July 1, 2023.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may:

- Ensure that financial entities focus on pecuniary factors and safe and sound practices that will protect their businesses;
- Increase access to financial products and services that would otherwise be limited by ESG-related discrimination.
- Expand who can receive government procurement awards;
- Limit the ability of some financial firms to provide services to units of state and local government;
- Limit the ability of some banks to be certified as QPDs and accept deposits from units of state and local government; and
- Impose administrative costs on banks, trusts, and credit unions operating in Florida if they must revise investment policies and train staff to comply with the provisions set forth in the bill.

C. Government Sector Impact:

The bill may increase administrative costs of state agencies that must revise policies or practices relating to investments, bond financing, contracts, QPDs, and banking, and train staff accordingly. Enforcement costs of state agencies are recoverable through the imposition of administrative fines. Enforcement costs of the Attorney General may be recovered through awards of attorney fees and costs, so long as an enforcement action is successful.

The bill may increase administrative costs of local governments that must revise policies relating to investments, bond financing, and contracts, and train staff accordingly. Such costs could be absorbed within ongoing operating budgets.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.57, 20.058, 112.656, 112.661, 175.071, 185.06, 215.47, 215.475, 215.4755, 218.415, 280.02, 280.05, 280.051, 280.054, 280.055, 560.114, 655.005, and 1010.04.

This bill creates the following sections of the Florida Statutes: 112.662, 215.681, 215.855, 280.025, 287.05701, 516.037, 560.1115, and 655.0323.

This bill re-enacts the following sections of the Florida Statutes: 17.61 and 215.44.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on March 29, 2023:

- Clarifies that the definition of "pecuniary factor" does not include considering the furtherance of social, political, or ideological interests, rather than consideration "or" furtherance of such factors;
- Provides that the provisions contained in s. 215.472, F.S., relating to prohibited investments by state agencies, will control if there is a conflict with the provisions in s. 17.57, F.S., to ensure that state investment prohibitions related to Cuba and Venezuela remain in place;
- Clarifies that the investment restrictions do not apply to individual member-directed investment accounts established as part of a defined contribution plan;
- Amends the cross-reference in section 8 of the bill to s. 215.471, F.S., to refer to the provisions relating to the SBA's prohibited investments in Cuba and Venezuela;
- Clarifies that bonds may be issued for specific governmental environmental projects, but are prohibited from being marketed as generalized or global environmental bonds;
- Clarifies that the prohibitions on third-party verifier services applies to ESG bond labels; and
- Specifies that financial institutions are subject to sanctions and penalties for failure to timely make the required attestation.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2023	.	
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The Committee on Banking and Insurance (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 17.57, Florida Statutes, is amended to read:

17.57 Deposits and investments of state money.—

(1)(a) As used in this subsection, the term "pecuniary factor" means a factor that the Chief Financial Officer, or other party authorized to invest on his or her behalf, prudently



determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests.

(b) The Chief Financial Officer, or other parties with the permission of the Chief Financial Officer, shall deposit the money of the state or any money in the State Treasury in such qualified public depositories of the state as will offer satisfactory collateral security for such deposits, pursuant to chapter 280. It is the duty of the Chief Financial Officer, consistent with the cash requirements of the state, to keep such money fully invested or deposited as provided herein in order that the state may realize maximum earnings and benefits.

(c) Notwithstanding any other law except for s. 215.472, when deciding whether to invest and when investing, the Chief Financial Officer, or other party authorized to invest on his or her behalf, must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 2. Present subsections (4) and (5) of section 20.058, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and paragraph (g) is added to subsection (1) and a new subsection (4) is added to that section, to read:

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20.058 Citizen support and direct-support organizations.—

(1) By August 1 of each year, a citizen support organization or direct-support organization created or authorized pursuant to law or executive order and created, approved, or administered by an agency, shall submit the following information to the appropriate agency:

(g) An attestation, under penalty of perjury, stating that the organization has complied with subsection (4).

(4)(a) As used in this section, the term "pecuniary factor" means a factor that the citizen support organization or direct-support organization prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing funds on behalf of an agency, the citizen support organization or direct-support organization must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 3. Subsection (1) of section 112.656, Florida Statutes, is amended to read:

112.656 Fiduciary duties; certain officials included as

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fiduciaries.—

(1) A fiduciary shall discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Investment decisions must comply with s. 112.662.

Section 4. Subsection (4) of section 112.661, Florida Statutes, is amended to read:

112.661 Investment policies.—Investment of the assets of any local retirement system or plan must be consistent with a written investment policy adopted by the board. Such policies shall be structured to maximize the financial return to the retirement system or plan consistent with the risks incumbent in each investment and shall be structured to establish and maintain an appropriate diversification of the retirement system or plan's assets.

(4) INVESTMENT AND FIDUCIARY STANDARDS.—The investment policy shall describe the level of prudence and ethical standards to be followed by the board in carrying out its investment activities with respect to funds described in this section. The board in performing its investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). Except as provided in s. 112.662, in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this section ~~shall~~ prevail.

Section 5. Section 112.662, Florida Statutes, is created to



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read:

112.662 Investments; exercising shareholder rights.—

(1) As used in this section, the term "pecuniary factor" means a factor that the plan administrator, named fiduciary, board, or board of trustees prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with the investment objectives and funding policy of the retirement system or plan. The term does not include the consideration of the furtherance of any social, political, or ideological interests.

(2) Notwithstanding any other law, when deciding whether to invest and when investing the assets of any retirement system or plan, only pecuniary factors may be considered and the interests of the participants and beneficiaries of the system or plan may not be subordinated to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(3) Notwithstanding any other law, when deciding whether to exercise shareholder rights or when exercising such rights on behalf of a retirement system or plan, including the voting of proxies, only pecuniary factors may be considered and the interests of the participants and beneficiaries of the system or plan may not be subordinated to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor.

(4)(a) By December 15, 2023, and by December 15 of each

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odd-numbered year thereafter, each retirement system or plan shall file a comprehensive report detailing and reviewing the governance policies concerning decisionmaking in vote decisions and adherence to the fiduciary standards required of such retirement system or plan under this section, including the exercise of shareholder rights.

1. The State Board of Administration, on behalf of the Florida Retirement System, shall submit its report to the Governor, the Attorney General, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.

2. All other retirement systems or plans shall submit their reports to the Department of Management Services.

(b) By January 15, 2024, and by January 15 of each even-numbered year thereafter, the Department of Management Services shall submit a summary report to the Governor, the Attorney General, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives that includes a summary of the reports submitted under paragraph (a) and identifies any relevant trends among such systems and plans.

(c) The Department of Management Services shall report incidents of noncompliance to the Attorney General, who may institute proceedings to enjoin any person found violating this section. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

(d) The Department of Management Services shall adopt rules to implement this subsection.

(5) This section does not apply to individual member-directed investment accounts established as part of a defined



contribution plan under s. 401(a), s. 403(b), or s. 457 of the Internal Revenue Code.

Section 6. Subsection (1) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11, ~~and~~ the Code of Ethics in ss. 112.311-112.3187, and the requirements in s. 112.662, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund are entitled under this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the



United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, if:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor may the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.

This paragraph applies to all boards of trustees and participants. However, if a municipality or special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees desire to vary the investment procedures, the trustees of such plan must request a variance of the investment procedures as outlined herein only through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent


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equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts must be consecutively numbered, be signed by the chair and secretary, or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and the board's acts and proceedings.

Section 7. Subsection (1) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local



law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11, ~~and~~ the Code of Ethics in ss. 112.311-112.3187, and the requirements in s. 112.662, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are entitled under this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds



only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph applies to all boards of trustees and participants. However, if a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees desire to vary the investment procedures, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

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(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 8. Subsection (10) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(10)(a) As used in this subsection, the term "pecuniary factor" means a factor that the State Board of Administration prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment

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objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law except for ss. 215.471, 215.4725, and 215.473, when deciding whether to invest and when investing the assets of any fund, the State Board of Administration must make decisions based solely on pecuniary factors and may not subordinate the interests of the participants and beneficiaries of the fund to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(c) Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A) through (C). Except as provided in paragraph (b), in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this paragraph ~~subsection shall~~ prevail.

Section 9. Subsection (1) of section 215.475, Florida Statutes, is amended to read:

215.475 Investment policy statement.—

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(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must comply with s. 215.47(10) and include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

Section 10. Present paragraphs (b), (c), and (d) of subsection (1) of section 215.4755, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, a new paragraph (b) is added to that subsection, and subsection (3) of that section is amended, to read:

215.4755 Certification and disclosure requirements for investment advisers and managers.—

(1) An investment adviser or manager who has discretionary investment authority for direct holdings and who is retained as provided in s. 215.44(2)(b) shall agree pursuant to contract to annually certify in writing to the board that:

(b) All investment decisions made on behalf of the trust funds and the board are made based solely on pecuniary factors as defined in s. 215.47(10)(a) and do not subordinate the interests of the participants and beneficiaries of the funds to other objectives, including sacrificing investment return or


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undertaking additional investment risk to promote any nonpecuniary factor. This paragraph applies to any contract executed, amended, or renewed on or after July 1, 2023.

(3)(a) An investment adviser or manager certification required under subsection (1) must ~~shall~~ be provided by each ~~annually, no later than~~ January 31~~,~~ for the reporting period of the previous calendar year on a form prescribed by the board.

(b) Failure to timely file the certification required under subsection (1) is grounds for termination of any contract between the board and the investment advisor or manager.

(c) Submission of a materially false certification is deemed a willful refusal to comply with the fiduciary standard described in paragraph (1)(b).

(d) If an investment advisor or manager fails to comply with the fiduciary standard described in paragraph (1)(b) while providing services to the board, the board must report such noncompliance to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

Section 11. Section 215.681, Florida Statutes, is created to read:

215.681 ESG bonds; prohibitions.—

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

(a) "Bonds" means any note, general obligation bond, revenue bond, special assessment bond, special obligation bond, private activity bond, certificate of participation, or other evidence of indebtedness or obligation, in either temporary or

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definitive form.

(b) "ESG" means environmental, social, and governance.

(c) "ESG bonds" means any bonds that have been designated or labeled as bonds that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting a generalized or global environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives. The term includes those bonds self-designated by the issuer as ESG-labeled bonds and those designated as ESG-labeled bonds by a third-party verifier.

(d) "Issuer" means the division, acting on behalf of any entity; any local government, educational entity, or entity of higher education as defined in s. 215.89(2)(c), (d), and (e), respectively, or other political subdivision granted the power to issue bonds; any public body corporate and politic authorized or created by general or special law and granted the power to issue bonds, including, but not limited to, a water and sewer district created under chapter 153, a health facilities authority as defined in s. 154.205, an industrial development authority created under chapter 159, a housing financing authority as defined in s. 159.603(3), a research and development authority as defined in s. 159.702(1)(c), a legal or administrative entity created by interlocal agreement pursuant to s. 163.01(7), a community redevelopment agency as defined in s. 163.340(1), a regional transportation authority created under chapter 163, a community development district as defined in s.



190.003, an educational facilities authority as defined in s. 243.52(1), the Higher Educational Facilities Financing Authority created under s. 243.53, the Florida Development Finance Corporation created under s. 288.9604, a port district or port authority as defined in s. 315.02(1) and (2), respectively, the South Florida Regional Transportation Authority created under s. 343.53, the Central Florida Regional Transportation Authority created under s. 343.63, the Tampa Bay Area Regional Transit Authority created under s. 343.92, the Greater Miami Expressway Agency created under s. 348.0304, the Tampa-Hillsborough County Expressway Authority created under s. 348.52, the Central Florida Expressway Authority created under s. 348.753, the Jacksonville Transportation Authority created under s. 349.03, and the Florida Housing Finance Corporation created under s. 420.504.

(e) "Rating agency" means any nationally recognized rating service or nationally recognized statistical rating organization.

(f) "Third-party verifier" means any entity that contracts with an issuer to conduct an external review and independent assessment of proposed ESG bonds to ensure that such bonds may be designated or labeled as ESG bonds or will be used to finance a project that will comply with applicable ESG standards.

(2) Notwithstanding any other provision of law relating to the issuance of bonds, it is a violation of this section and it is prohibited for any issuer to:

(a) Issue ESG bonds.

(b) Expend public funds as defined in s. 215.85(3) or use moneys derived from the issuance of bonds to pay for the


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services of a third-party verifier related to the designation or labeling of bonds as ESG bonds, including, but not limited to, certifying or verifying that bonds may be designated or labeled as ESG bonds, rendering a second-party opinion or producing a verifier's report as to the compliance of proposed ESG bonds with applicable ESG standards and metrics, complying with post-issuance reporting obligations, or other services that are only provided due to the designation or labeling of bonds as ESG bonds.

(c) Enter into a contract with any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond ratings.

(3) Notwithstanding s. 655.0323, a financial institution as defined in s. 655.005(1) may purchase and underwrite bonds issued by a governmental entity.

(4) This section does not apply to any bonds issued before July 1, 2023, or to any agreement entered into or any contract executed before July 1, 2023.

Section 12. Section 215.855, Florida Statutes, is created to read:

215.855 Investment manager external communication.—

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

(a) "Governmental entity" means a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, board, bureau, commission, authority, district, or agency thereof, or a public school, Florida College System institution, state university, or associated board.

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(b) "Investment manager" means a private sector company that offers one or more investment products or services to a governmental entity and that has the discretionary investment authority for direct holdings.

(c) "Public funds" means all moneys under the jurisdiction of a governmental entity and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose, subject to investment.

(2) Any contract between a governmental entity and an investment manager must contain the following provisions:

(a) That any written communication made by the investment manager to a company in which such manager invests public funds on behalf of a governmental entity must include the following disclaimer in a conspicuous location if such communication discusses social, political, or ideological interests; subordinates the interests of the company's shareholders to the interest of another entity; or advocates for the interest of an entity other than the company's shareholders:

The views and opinions expressed in this communication are those of the sender and do not reflect the views and opinions of the people of the State of Florida.

(b) That the contract may be unilaterally terminated at the option of the governmental entity if the investment manager does not include the disclaimer required in paragraph (a).

(3) This section applies to contracts between a governmental entity and an investment manager executed, amended, or renewed on or after July 1, 2023.

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Section 13. Subsection (24) is added to section 218.415, Florida Statutes, to read:

218.415 Local government investment policies.—Investment activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(24) INVESTMENT DECISIONS.—

(a) As used in this subsection, the term "pecuniary factor" means a factor that the governing body of the unit of local government, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government, prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social,



political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing public funds pursuant to this section, the unit of local government must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 14. Present paragraphs (e) and (f) of subsection (26) of section 280.02, Florida Statutes, are redesignated as paragraphs (g) and (h), respectively, and new paragraphs (e) and (f) are added to that subsection, to read:

280.02 Definitions.—As used in this chapter, the term:

(26) "Qualified public depository" means a bank, savings bank, or savings association that:

(e) Makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member. This paragraph does not restrict a qualified public depository that claims a religious purpose from making such determinations based on the religious beliefs, religious exercise, or religious affiliations of a customer or member.

(f) Does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:



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1. The person's political opinions, speech, or affiliations;

2. Except as provided in paragraph (e), the person's religious beliefs, religious exercise, or religious affiliations;

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

4. The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

a. The person's political opinions, speech, or affiliations.

b. The person's religious beliefs, religious exercise, or religious affiliations.

c. The person's lawful ownership of a firearm.

d. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

e. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

f. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

g. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this subparagraph.

h. The person's failure to meet or commit to meet, or



expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

(I) Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

(II) Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

(III) Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

(IV) Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

Section 15. Section 280.025, Florida Statutes, is created to read:

280.025 Attestation required.—

(1) Beginning July 1, 2023, the following entities must attest, under penalty of perjury, on a form prescribed by the Chief Financial Officer, whether the entity is in compliance with s. 280.02(26)(e) and (f):

(a) A bank, savings bank, or savings association, upon application or reapplication for designation as a qualified public depository.

(b) A qualified public depository, upon filing the report required by s. 280.16(1)(d).

(2) If an application or reapplication for designation as a qualified public depository is pending on July 1, 2023, the bank, savings bank, or savings association must file the



attestation required under subsection (1) before being designated or redesignated a qualified public depository.

Section 16. Paragraph (d) of subsection (13) and subsection (17) of section 280.05, Florida Statutes, are amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(13) Require the filing of the following reports, which the Chief Financial Officer shall process as provided:

(d)1. Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer in order to ascertain compliance with this chapter, including, but not limited to, verifying the attestation required under s. 280.025.

2. If the Chief Financial Officer determines that the attestation required under s. 280.025 is materially false, he or she must report such determination to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

3. As related to federally chartered financial institutions, this paragraph may not be construed to create a power exceeding the visitorial powers of the Chief Financial Officer allowed under federal law.

(17) Suspend or disqualify or disqualify after suspension any qualified public depository that has violated ~~any of the~~


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~~provisions of~~ this chapter or ~~of~~ rules adopted hereunder or that no longer meets the definition of a qualified public depository under s. 280.02.

(a) Any qualified public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11(2) governing withdrawal from the public deposits program and return of pledged collateral. Any suspension shall not exceed a period of 6 months. Any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of 1 year from the date of the final order of disqualification or the final disposition of any appeal taken therefrom.

(b) In lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.

(c) If the Chief Financial Officer has reason to believe that any qualified public depository or any other financial institution holding public deposits is or has been violating ~~any of the provisions of~~ this chapter or ~~of~~ rules adopted hereunder or no longer meets the definition of a qualified public depository under s. 280.02, he or she may issue to the qualified public depository or other financial institution an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation. If any qualified public depository or other financial institution violates a cease-and-desist or corrective order, the Chief Financial Officer may impose an administrative penalty upon the qualified public depository or other financial institution as provided in s. 280.054 or s. 280.055. In addition to the administrative

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penalty, the Chief Financial Officer may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

Section 17. Subsections (14) and (15) are added to section 280.051, Florida Statutes, to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(14) Failed to file the attestation required under s. 280.025.

(15) No longer meets the definition of a qualified public depository under s. 280.02.

Section 18. Paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues



constitutes a separate violation. Failure to timely file the attestation required under s. 280.025 is deemed a knowing and willful violation.

Section 19. Paragraphs (e) and (f) of subsection (1) of section 280.055, Florida Statutes, are amended, and paragraph (g) is added to that subsection, to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; ~~or~~

(f) A qualified public depository; a bank, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order; or

(g) A qualified public depository no longer meets the definition of a qualified public depository under s. 280.02.

Section 20. Section 287.05701, Florida Statutes, is created to read:

287.05701 Prohibition against considering social, political, or ideological interests in government contracting.—

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(1) As used in this section, the term "awarding body" means:

(a) For state contracts, an agency or the department.

(b) For local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

(2)(a) An awarding body may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

(b) An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

(3) Beginning July 1, 2023, any solicitation for the procurement of commodities or contractual services by an awarding body must include a provision notifying vendors of the provisions of this section.

Section 21. Section 516.037, Florida Statutes, is created to read:

516.037 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a licensee that claims a religious purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise



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discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this

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paragraph.

8. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsections (1) and (2).

(4) In addition to any sanctions and penalties under this chapter, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Notwithstanding s. 501.211, violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is



successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 22. Section 560.1115, Florida Statutes, is created to read:

560.1115 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a licensee that claims a religious purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or



affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph.

8. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee

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participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees, as applicable, must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsections (1) and (2).

(4) In addition to any sanctions and penalties under this chapter, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Notwithstanding s. 501.211, violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 23. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is amended to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111 or s. 560.1115.

Section 24. Paragraph (y) of subsection (1) of section



655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(y) "Unsafe or unsound practice" or "unsafe and unsound practice" means:

1. Any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved; or

2. Failure to comply with s. 655.0323(1), or engaging in a practice described in s. 655.0323(2).

Section 25. Section 655.0323, Florida Statutes, is created to read:

655.0323 Unsafe and unsound practices.—

(1) Financial institutions must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer or member and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a financial institution that claims a religious purpose from making such determinations based on the current or prospective customer's or

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member's religious beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a financial institution to deny or cancel its services to a person, or to otherwise discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government


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in combatting illegal immigration, drug trafficking, or human trafficking.

7. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph.

8. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and by July 1 of each year thereafter, financial institutions subject to the financial institutions codes must attest, under penalty of perjury, on a form prescribed by the commission whether the entity is acting in compliance with subsections (1) and (2).

(4) Engaging in a practice described in subsection (2) or failing to timely provide the attestation under subsection (3) is a failure to comply with this chapter, constitutes a

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violation of the financial institutions codes, and is subject to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) Notwithstanding ss. 501.211 and 501.212, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

(6) The office and the commission may not exercise authority pursuant to s. 655.061 in relation to this section.

Section 26. Subsection (5) is added to section 1010.04, Florida Statutes, to read:

1010.04 Purchasing.—

(5) Beginning July 1, 2023, school districts, Florida College System institutions, and state universities may not:

(a) Request documentation of or consider a vendor's social, political, or ideological interests.

(b) Give preference to a vendor based on the vendor's social, political, or ideological interests.

Any solicitation for purchases and leases must include a provision notifying vendors of the provisions of this subsection.

Section 27. For the purpose of incorporating the amendment made by this act to section 17.57, Florida Statutes, in


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references thereto, subsection (1) of section 17.61, Florida Statutes, is reenacted to read:

17.61 Chief Financial Officer; powers and duties in the investment of certain funds.—

(1) The Chief Financial Officer shall invest all general revenue funds and all the trust funds and all agency funds of each state agency, and of the judicial branch, as defined in s. 216.011, and may, upon request, invest funds of any board, association, or entity created by the State Constitution or by law, except for the funds required to be invested pursuant to ss. 215.44-215.53, by the procedure and in the authorized securities prescribed in s. 17.57; for this purpose, the Chief Financial Officer may open and maintain one or more demand and safekeeping accounts in any bank or savings association for the investment and reinvestment and the purchase, sale, and exchange of funds and securities in the accounts. Funds in such accounts used solely for investments and reinvestments shall be considered investment funds and not funds on deposit, and such funds shall be exempt from the provisions of chapter 280. In addition, the securities or investments purchased or held under the provisions of this section and s. 17.57 may be loaned to securities dealers and banks and may be registered by the Chief Financial Officer in the name of a third-party nominee in order to facilitate such loans, provided the loan is collateralized by cash or United States government securities having a market value of at least 100 percent of the market value of the securities loaned. The Chief Financial Officer shall keep a separate account, designated by name and number, of each fund. Individual transactions and totals of all investments, or the

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share belonging to each fund, shall be recorded in the accounts.

Section 28. For the purpose of incorporating the amendment made by this act to section 215.47, Florida Statutes, in a reference thereto, subsection (3) of section 215.44, Florida Statutes, is reenacted to read:

215.44 Board of Administration; powers and duties in relation to investment of trust funds.—

(3) Notwithstanding any law to the contrary, all investments made by the State Board of Administration pursuant to ss. 215.44-215.53 shall be subject to the restrictions and limitations contained in s. 215.47, except that investments made by the State Board of Administration under a trust agreement pursuant to subsection (1) shall be subject only to the restrictions and limitations contained in the trust agreement.

Section 29. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to government and corporate activism; amending s. 17.57, F.S.; defining the term "pecuniary factor"; requiring that the Chief Financial Officer, or a party authorized to invest on his or her behalf, make investment decisions based solely on pecuniary factors; amending s. 20.058, F.S.; requiring a specified attestation, under penalty of perjury, from certain organizations; defining the term "pecuniary

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factor"; requiring citizen support organizations and direct-support organizations to make investment decisions based solely on pecuniary factors; amending s. 112.656, F.S.; requiring that investment decisions comply with a specified requirement related to the consideration of pecuniary factors; amending s. 112.661, F.S.; conforming a provision to changes made by the act; creating s. 112.662, F.S.; defining the term "pecuniary factor"; providing that only pecuniary factors may be considered in investment decisions for retirement systems or plans; providing that the interests of participants and beneficiaries of such systems or plans may not be subordinated to other objectives; requiring shareholder rights to be exercised considering only pecuniary factors; requiring specified reports; providing requirements for such reports; requiring the Department of Management Services to report certain noncompliance to the Attorney General; authorizing certain proceedings to be brought by the Attorney General who, if successful in those proceedings, is entitled to reasonable attorney fees and costs; requiring the department to adopt rules; providing applicability; amending ss. 175.071 and 185.06, F.S.; specifying that certain public boards of trustees are subject to the requirement that only pecuniary factors be considered in investment decisions; amending s. 215.47, F.S.; defining the term "pecuniary factor"; requiring the State Board of Administration to make investment



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decisions based solely on pecuniary factors; providing an exception to current investment and fiduciary standards in the event of a conflict; amending s. 215.475, F.S.; requiring the Florida Retirement System Defined Benefit Plan Investment Policy Statement to comply with the requirement that only pecuniary factors be considered in investment decisions; amending s. 215.4755, F.S.; requiring certain investment advisors or managers to certify in writing that investment decisions are based solely on pecuniary factors; providing applicability; providing that failure to file a required certification is grounds for termination of certain contracts; providing that a submission of a materially false certification is deemed a willful refusal to comply with a certain fiduciary standard; requiring that certain noncompliance be reported to the Attorney General, who is authorized to bring certain civil or administrative actions; providing that if the Attorney General is successful in those proceedings, he or she is entitled to reasonable attorney fees and costs; creating s. 215.681, F.S.; defining terms; prohibiting bond issuers from issuing environmental, social, and governance bonds and taking other related actions; authorizing certain financial institutions to purchase and underwrite specified bonds; providing applicability; creating s. 215.855, F.S.; defining terms; requiring that contracts between governmental entities and investment managers contain certain

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provisions and a specified disclaimer; providing applicability; amending s. 218.415, F.S.; defining the term "pecuniary factor"; requiring units of local government to make investment decisions based solely on pecuniary factors; amending s. 280.02, F.S.; revising the definition of the term "qualified public depository"; creating s. 280.025, F.S.; requiring a specified attestation, under penalty of perjury, from certain entities, beginning on a specified date; amending s. 280.05, F.S.; requiring the Chief Financial Officer to verify such attestations; requiring the Chief Financial Officer to report materially false attestations to the Attorney General, who is authorized to bring certain civil and administrative actions; providing that if the Attorney General is successful in those proceedings, he or she is entitled to reasonable attorney fees and costs; providing construction; authorizing the Chief Financial Officer to suspend or disqualify a qualified public depository that no longer meets the definition of that term; amending s. 280.051, F.S.; adding grounds for suspension or disqualification of a qualified public depository; amending s. 280.054, F.S.; providing that failure to timely file a required attestation is deemed a knowing and willful violation; amending s. 280.055, F.S.; adding a circumstance under which the Chief Financial Officer may issue certain orders against a qualified public depository; creating s. 287.05701, F.S.; defining the term "awarding body";



prohibiting an awarding body from requesting certain documentation or giving preference to vendors based on their social, political, or ideological interests; requiring that solicitations for the procurement of commodities or contractual services by an awarding body contain a specified notification, beginning on a specified date; creating s. 516.037, F.S.; requiring licensees to make certain determinations based on an analysis of certain risk factors; prohibiting such licensees from engaging in unsafe and unsound practices; providing construction; providing that certain actions on the part of licensees are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from applicants and licensees, beginning on a specified date; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; creating s. 560.1115, F.S.; requiring licensees to make determinations about the provision or denial of services based on an analysis of certain risk factors; prohibiting the licensees from engaging in unsafe and unsound practices; providing construction; providing



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that certain actions are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from applicants and licensees, beginning on a specified date; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; amending s. 560.114, F.S.; revising the actions that constitute grounds for specified disciplinary action of a money services business, an authorized vendor, or an affiliated party; amending s. 655.005, F.S.; revising a definition; creating s. 655.0323, F.S.; requiring financial institutions to make determinations about the provision or denial of services based on an analysis of specified risk factors; prohibiting financial institutions from engaging in unsafe and unsound practices; providing construction; providing that certain actions are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from financial institutions annually, beginning on a specified date; providing that engaging in specified actions or failing to provide such attestation constitutes a violation of specified codes, subject to certain


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sanctions and penalties; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; prohibiting certain entities from exercising specified authority; amending s. 1010.04, F.S.; prohibiting school districts, Florida College System institutions, and state universities from requesting certain documentation from vendors and giving preference to vendors based on their social, political, or ideological interests; requiring that solicitations for purchases or leases include a specified notice; reenacting s. 17.61(1), F.S., relating to powers and duties of the Chief Financial Officer in the investment of certain funds, to incorporate the amendment made to s. 17.57, F.S., in references thereto; reenacting s. 215.44(3), F.S., relating to the powers and duties of the Board of Administration in the investment of trust funds, to incorporate the amendment made to s. 215.47, F.S., in a reference thereto; providing an effective date.

By Senator Grall

29-01836D-23 2023302__

A bill to be entitled

An act relating to government and corporate activism; amending s. 17.57, F.S.; defining the term "pecuniary factor"; requiring that the Chief Financial Officer, or a party authorized to invest on his or her behalf, make investment decisions based solely on pecuniary factors; amending s. 20.058, F.S.; requiring a specified attestation, under penalty of perjury, from certain organizations; defining the term "pecuniary factor"; requiring citizen support organizations and direct-support organizations to make investment decisions based solely on pecuniary factors; amending s. 112.656, F.S.; requiring that investment decisions comply with a specified requirement related to the consideration of pecuniary factors; amending s. 112.661, F.S.; conforming a provision to changes made by the act; creating s. 112.662, F.S.; defining the term "pecuniary factor"; providing that only pecuniary factors may be considered in investment decisions for retirement systems or plans; providing that the interests of participants and beneficiaries of such systems or plans may not be subordinated to other objectives; requiring shareholder rights to be exercised considering only pecuniary factors; requiring specified reports; providing requirements for such reports; requiring the Department of Management Services to report certain noncompliance to the Attorney General; authorizing certain proceedings to be brought by the Attorney General who, if

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successful in those proceedings, is entitled to reasonable attorney fees and costs; requiring the department to adopt rules; amending ss. 175.071 and 185.06, F.S.; specifying that certain public boards of trustees are subject to the requirement that only pecuniary interests be considered in investment decisions; amending s. 215.47, F.S.; defining the term "pecuniary factor"; requiring the State Board of Administration to make investment decisions based solely on pecuniary factors; providing an exception to current investment and fiduciary standards in the event of a conflict; amending s. 215.475, F.S.; requiring the Florida Retirement System Defined Benefit Plan Investment Policy Statement to comply with the requirement that only pecuniary interests be considered in investment decisions; amending s. 215.4755, F.S.; requiring certain investment advisors or managers to certify in writing that investment decisions are based solely on pecuniary factors; providing applicability; providing that failure to file a required certification is grounds for termination of certain contracts; providing that a submission of a materially false certification is deemed a willful refusal to comply with a certain fiduciary standard; requiring that certain noncompliance be reported to the Attorney General, who is authorized to bring certain civil or administrative actions; providing that if the Attorney General is successful in those proceedings, he or she is entitled

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to reasonable attorney fees and costs; creating s. 215.681, F.S.; defining terms; prohibiting bond issuers from issuing environmental, social, and governance bonds and taking other related actions; authorizing certain financial institutions to purchase and underwrite specified bonds; providing applicability; creating s. 215.855, F.S.; defining terms; requiring that contracts between governmental entities and investment managers contain certain provisions and a specified disclaimer; providing applicability; amending s. 218.415, F.S.; defining the term "pecuniary factor"; requiring units of local government to make investment decisions based solely on pecuniary factors; amending s. 280.02, F.S.; revising the definition of the term "qualified public depository"; creating s. 280.025, F.S.; requiring a specified attestation, under penalty of perjury, from certain entities; amending s. 280.05, F.S.; requiring the Chief Financial Officer to verify such attestations; requiring the Chief Financial Officer to report materially false attestations to the Attorney General, who is authorized to bring certain civil and administrative actions; providing that if the Attorney General is successful in those proceedings, he or she is entitled to reasonable attorney fees and costs; providing construction; authorizing the Chief Financial Officer to suspend or disqualify a qualified public depository that no longer meets the definition of that term; amending s. 280.051, F.S.; adding

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grounds for suspension or disqualification of a qualified public depository; amending s. 280.054, F.S.; providing that failure to timely file a required attestation is deemed a knowing and willful violation; amending s. 280.055, F.S.; adding a circumstance under which the Chief Financial Officer may issue certain orders against a qualified public depository; creating s. 287.05701, F.S.; defining the term "awarding body"; prohibiting an awarding body from requesting certain documentation or giving preference to vendors based on their social, political, or ideological interests; requiring that solicitations for the procurement of commodities or contractual services by an awarding body contain a specified notification, beginning on a specified date; creating s. 516.037, F.S.; requiring licensees to make certain determinations based on an analysis of certain risk factors; prohibiting such licensees from engaging in unsafe and unsound practices; providing construction; providing that certain actions on the part of licensees are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from applicants and licensees beginning on a specified date; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations;

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providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; creating s. 560.1115, F.S.; requiring licensees to make determinations about the provision or denial of services based on an analysis of certain risk factors; prohibiting the licensees from engaging in unsafe and unsound practices; providing construction; providing that certain actions are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from applicants and licensees beginning on a specified date; providing that a failure to comply with specified requirements or engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; amending s. 560.114, F.S.; revising the actions that constitute grounds for specified disciplinary action of a money services business, an authorized vendor, or an affiliated party; amending s. 655.005, F.S.; revising a definition; creating s. 655.0323, F.S.; requiring financial institutions to make determinations about the provision or denial of services based on an analysis of specified risk factors; prohibiting financial institutions from

engaging in unsafe and unsound practices; providing construction; providing that certain actions are an unsafe and unsound practice; requiring a specified attestation, under penalty of perjury, from financial institutions annually, beginning on a specified date; providing that engaging in unsafe and unsound practices constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to specified sanctions and penalties; providing that only the enforcing authority can enforce such violations; providing that an enforcing authority that brings a successful action for violations is entitled to reasonable attorney fees and costs; prohibiting certain entities from exercising specified authority; amending s. 1010.04, F.S.; prohibiting school districts, Florida College System Institutions, and state universities from requesting certain documentation from vendors and giving preference to vendors based on their social, political, or ideological interests; requiring that solicitations for purchases or leases include a specified notice; reenacting s. 17.61(1), F.S., relating to powers and duties of the Chief Financial Officer in the investment of certain funds, to incorporate the amendment made to s. 17.57, F.S., in references thereto; reenacting s. 215.44(3), F.S., relating to the powers and duties of the Board of Administration in the investment of trust funds, to incorporate the amendment made to s. 215.47, F.S., in a reference

thereto; providing an effective date.

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

Section 1. Subsection (1) of section 17.57, Florida Statutes, is amended to read:

17.57 Deposits and investments of state money.—

(1)(a) As used in this subsection, the term "pecuniary factor" means a factor that the Chief Financial Officer, or other party authorized to invest on his or her behalf, prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration or furtherance of any social, political, or ideological interests.

(b) The Chief Financial Officer, or other parties with the permission of the Chief Financial Officer, shall deposit the money of the state or any money in the State Treasury in such qualified public depositories of the state as will offer satisfactory collateral security for such deposits, pursuant to chapter 280. It is the duty of the Chief Financial Officer, consistent with the cash requirements of the state, to keep such money fully invested or deposited as provided herein in order that the state may realize maximum earnings and benefits.

(c) Notwithstanding any other law, when deciding whether to invest and when investing, the Chief Financial Officer, or other party authorized to invest on his or her behalf, must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other

objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 2. Present subsections (4) and (5) of section 20.058, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and paragraph (g) is added to subsection (1) and a new subsection (4) is added to that section, to read:

20.058 Citizen support and direct-support organizations.—

(1) By August 1 of each year, a citizen support organization or direct-support organization created or authorized pursuant to law or executive order and created, approved, or administered by an agency, shall submit the following information to the appropriate agency:

(g) An attestation, under penalty of perjury, stating that the organization has complied with subsection (4).

(4)(a) As used in this section, the term "pecuniary factor" means a factor that the citizen support organization or direct-support organization prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing funds on behalf of an agency, the citizen support organization or direct-support organization must make decisions based solely on pecuniary factors and may not

subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 3. Subsection (1) of section 112.656, Florida Statutes, is amended to read:

112.656 Fiduciary duties; certain officials included as fiduciaries.—

(1) A fiduciary shall discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Investment decisions must comply with s. 112.662.

Section 4. Subsection (4) of section 112.661, Florida Statutes, is amended to read:

112.661 Investment policies.—Investment of the assets of any local retirement system or plan must be consistent with a written investment policy adopted by the board. Such policies shall be structured to maximize the financial return to the retirement system or plan consistent with the risks incumbent in each investment and shall be structured to establish and maintain an appropriate diversification of the retirement system or plan's assets.

(4) INVESTMENT AND FIDUCIARY STANDARDS.—The investment policy shall describe the level of prudence and ethical standards to be followed by the board in carrying out its

investment activities with respect to funds described in this section. The board in performing its investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). Except as provided in s. 112.662, in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this section ~~shall~~ prevail.

Section 5. Section 112.662, Florida Statutes, is created to read:

112.662 Investments; exercising shareholder rights.—

(1) As used in this section, the term "pecuniary factor" means a factor that the plan administrator, named fiduciary, board, or board of trustees prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with the investment objectives and funding policy of the retirement system or plan. The term does not include the consideration or furtherance of any social, political, or ideological interests.

(2) Notwithstanding any other law, when deciding whether to invest and when investing the assets of any retirement system or plan, only pecuniary factors may be considered and the interests of the participants and beneficiaries of the system or plan may not be subordinated to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(3) Notwithstanding any other law, when deciding whether to

exercise shareholder rights or when exercising such rights on behalf of a retirement system or plan, including the voting of proxies, only pecuniary factors may be considered and the interests of the participants and beneficiaries of the system or plan may not be subordinated to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor.

(4)(a) By December 15, 2023, and by December 15 of each odd-numbered year thereafter, each retirement system or plan shall file a comprehensive report detailing and reviewing the governance policies concerning decisionmaking in vote decisions and adherence to the fiduciary standards required of such retirement system or plan under this section, including the exercise of shareholder rights.

1. The State Board of Administration, on behalf of the Florida Retirement System, shall submit its report to the Governor, the Attorney General, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.

2. All other retirement systems or plans shall submit their reports to the Department of Management Services.

(b) By January 15, 2024, and by January 15 of each even-numbered year thereafter, the Department of Management Services shall submit a summary report to the Governor, the Attorney General, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives that includes a summary of the reports submitted under paragraph (a) and identifies any relevant trends among such systems and plans.

(c) The Department of Management Services shall report

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incidents of noncompliance to the Attorney General, who may institute proceedings to enjoin any person found violating this section. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

(d) The Department of Management Services shall adopt rules to implement this subsection.

Section 6. Subsection (1) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11, ~~and~~ the Code of Ethics in ss. 112.311-112.3187, and the requirements in s. 112.662, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund are entitled under this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose

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share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, if:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor may the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.

This paragraph applies to all boards of trustees and participants. However, if a municipality or special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees desire to vary the investment procedures, the trustees of such plan must request a variance of the investment procedures as outlined herein only

through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts must be consecutively numbered, be signed by the chair and secretary, or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and the board's acts and proceedings.

Section 7. Subsection (1) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11, ~~and~~ the Code of Ethics in ss. 112.311-112.3187, and the requirements in s. 112.662, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund are entitled under this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United

States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph applies to all boards of trustees and participants. However, if a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees desire to vary the investment procedures, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; if a special act, or a municipality by ordinance adopted before July 1, 1998, permits a greater than 50-percent equity investment, such municipality is not required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law, this section may not be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to

25 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money may otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 8. Subsection (10) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(10)(a) As used in this subsection, the term "pecuniary

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factor" means a factor that the State Board of Administration prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law except for ss. 215.472, 215.4725, and 215.473, when deciding whether to invest and when investing the assets of any fund, the State Board of Administration must make decisions based solely on pecuniary factors and may not subordinate the interests of the participants and beneficiaries of the fund to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

(c) Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A) through (C). Except as provided in paragraph (b), in case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards

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set forth in this paragraph ~~subsection shall~~ prevail.

Section 9. Subsection (1) of section 215.475, Florida Statutes, is amended to read:

215.475 Investment policy statement.—

(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must comply with s. 215.47(10) and include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

Section 10. Present paragraphs (b), (c), and (d) of subsection (1) of section 215.4755, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, a new paragraph (b) is added to that subsection, and subsection (3) of that section is amended, to read:

215.4755 Certification and disclosure requirements for investment advisers and managers.—

(1) An investment adviser or manager who has discretionary investment authority for direct holdings and who is retained as provided in s. 215.44(2)(b) shall agree pursuant to contract to annually certify in writing to the board that:

(b) All investment decisions made on behalf of the trust

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funds and the board are made based solely on pecuniary factors as defined in s. 215.47(10)(a) and do not subordinate the interests of the participants and beneficiaries of the funds to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. This paragraph applies to any contract executed, amended, or renewed on or after July 1, 2023.

(3)(a) An investment adviser or manager certification required under subsection (1) must ~~shall~~ be provided by each ~~annually, no later than~~ January 31~~,~~ for the reporting period of the previous calendar year on a form prescribed by the board.

(b) Failure to timely file the certification required under subsection (1) is grounds for termination of any contract between the board and the investment advisor or manager.

(c) Submission of a materially false certification is deemed a willful refusal to comply with the fiduciary standard described in paragraph (1)(b).

(d) If an investment advisor or manager fails to comply with the fiduciary standard described in paragraph (1)(b) while providing services to the board, the board must report such noncompliance to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

Section 11. Section 215.681, Florida Statutes, is created to read:

215.681 ESG bonds; prohibitions.—

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

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(a) "Bonds" means any note, general obligation bond, revenue bond, special assessment bond, special obligation bond, private activity bond, certificate of participation, or other evidence of indebtedness or obligation, in either temporary or definitive form.

(b) "ESG" means environmental, social, and governance.

(c) "ESG bonds" means any bonds that have been designated or labeled as bonds that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting an environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives. The term includes those bonds self-designated by the issuer as ESG-labeled bonds and those designated as ESG-labeled bonds by a third-party verifier.

(d) "Issuer" means the division, acting on behalf of any entity; any local government, educational entity, or entity of higher education as defined in s. 215.89(2)(c), (d), and (e), respectively, or other political subdivision granted the power to issue bonds; any public body corporate and politic authorized or created by general or special law and granted the power to issue bonds, including, but not limited to, a water and sewer district created under chapter 153, a health facilities authority as defined in s. 154.205, an industrial development authority created under chapter 159, a housing financing authority as defined in s. 159.603(3), a research and development authority as defined in s. 159.702(1)(c), a legal or

administrative entity created by interlocal agreement pursuant to s. 163.01(7), a community redevelopment agency as defined in s. 163.340(1), a regional transportation authority created under chapter 163, a community development district as defined in s. 190.003, an educational facilities authority as defined in s. 243.52(1), the Higher Educational Facilities Financing Authority created under s. 243.53, the Florida Development Finance Corporation created under s. 288.9604, a port district or port authority as defined in s. 315.02(1) and (2), respectively, the South Florida Regional Transportation Authority created under s. 343.53, the Central Florida Regional Transportation Authority created under s. 343.63, the Tampa Bay Area Regional Transit Authority created under s. 343.92, the Greater Miami Expressway Agency created under s. 348.0304, the Tampa-Hillsborough County Expressway Authority created under s. 348.52, the Central Florida Expressway Authority created under s. 348.753, the Jacksonville Transportation Authority created under s. 349.03, and the Florida Housing Finance Corporation created under s. 420.504.

(e) "Rating agency" means any nationally recognized rating service or nationally recognized statistical rating organization.

(f) "Third-party verifier" means any entity that contracts with an issuer to conduct an external review and independent assessment of proposed ESG bonds to ensure that such bonds may be designated or labeled as ESG bonds or will be used to finance a project that will comply with applicable ESG standards.

(2) Notwithstanding any other provision of law relating to the issuance of bonds, it is a violation of this section and it

is prohibited for any issuer to:

(a) Issue ESG bonds.

(b) Expend public funds as defined in s. 215.85(3) or use moneys derived from the issuance of bonds to pay for the services of a third-party verifier, including, but not limited to, certifying or verifying that bonds may be designated or labeled as ESG bonds, rendering a second-party opinion or producing a verifier's report as to the compliance of proposed ESG bonds with applicable ESG standards and metrics, complying with post-issuance reporting obligations, or other services that are only provided due to the designation or labeling of bonds as ESG bonds.

(c) Enter into a contract with any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond ratings.

(3) Notwithstanding s. 655.0323, a financial institution as defined in s. 655.005(1) may purchase and underwrite bonds issued by a governmental entity.

(4) This section does not apply to any bonds issued before July 1, 2023, or to any agreement entered into or any contract executed before July 1, 2023.

Section 12. Section 215.855, Florida Statutes, is created to read:

215.855 Investment manager external communication.—

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

(a) "Governmental entity" means a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, board, bureau, commission,

authority, district, or agency thereof, or a public school, Florida College System institution, state university, or associated board.

(b) "Investment manager" means a private sector company that offers one or more investment products or services to a governmental entity and that has the discretionary investment authority for direct holdings.

(c) "Public funds" means all moneys under the jurisdiction of a governmental entity and includes all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose, subject to investment.

(2) Any contract between a governmental entity and an investment manager must contain the following provisions:

(a) That any written communication made by the investment manager to a company in which such manager invests public funds on behalf of a governmental entity must include the following disclaimer in a conspicuous location if such communication discusses social, political, or ideological interests; subordinates the interests of the company's shareholders to the interest of another entity; or advocates for the interest of an entity other than the company's shareholders:

The views and opinions expressed in this communication are those of the sender and do not reflect the views and opinions of the people of the State of Florida.

(b) That the contract may be unilaterally terminated at the option of the governmental entity if the investment manager does not include the disclaimer required in paragraph (a).

(3) This section applies to contracts between a governmental entity and an investment manager executed, amended, or renewed on or after July 1, 2023.

Section 13. Subsection (24) is added to section 218.415, Florida Statutes, to read:

218.415 Local government investment policies.—Investment activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(24) INVESTMENT DECISIONS.—

(a) As used in this subsection, the term "pecuniary factor" means a factor that the governing body of the unit of local government, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government, prudently determines is expected to have a material effect on the risk or returns of an investment based on

appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration or furtherance of any social, political, or ideological interests.

(b) Notwithstanding any other law, when deciding whether to invest and when investing public funds pursuant to this section, the unit of local government must make decisions based solely on pecuniary factors and may not subordinate the interests of the people of this state to other objectives, including sacrificing investment return or undertaking additional investment risk to promote any nonpecuniary factor. The weight given to any pecuniary factor must appropriately reflect a prudent assessment of its impact on risk or returns.

Section 14. Present paragraphs (e) and (f) of subsection (26) of section 280.02, Florida Statutes, are redesignated as paragraphs (g) and (h), respectively, and new paragraphs (e) and (f) are added to that subsection, to read:

280.02 Definitions.—As used in this chapter, the term:

(26) "Qualified public depository" means a bank, savings bank, or savings association that:

(e) Makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member. This paragraph does not restrict a qualified public depository that claims a religious purpose from making such determinations based on the religious beliefs, religious exercise, or religious affiliations of a customer or member.

(f) Does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise

discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in paragraph (e), the person's religious beliefs, religious exercise, or religious affiliations;

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

4. The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

a. The person's political opinions, speech, or affiliations.

b. The person's religious beliefs, religious exercise, or religious affiliations.

c. The person's lawful ownership of a firearm.

d. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

e. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

f. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

g. The person's engagement with, facilitation of, employment by, support of, business relationship with,

representation of, or advocacy for any person described in this subparagraph.

h. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

(I) Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

(II) Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

(III) Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

(IV) Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

Section 15. Section 280.025, Florida Statutes, is created to read:

280.025 Attestation required.—

(1) Beginning July 1, 2023, the following entities must attest, under penalty of perjury, on a form prescribed by the Chief Financial Officer, whether the entity is in compliance with s. 280.02(26)(e) and (f):

(a) A bank, savings bank, or savings association, upon application or reapplication for designation as a qualified public depository.

(b) A qualified public depository, upon filing the report required by s. 280.16(1)(d).

(2) If an application or reapplication for designation as a qualified public depository is pending on July 1, 2023, the bank, savings bank, or savings association must file the attestation required under subsection (1) before being designated or redesignated a qualified public depository.

Section 16. Paragraph (d) of subsection (13) and subsection (17) of section 280.05, Florida Statutes, are amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(13) Require the filing of the following reports, which the Chief Financial Officer shall process as provided:

(d)1. Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer in order to ascertain compliance with this chapter, including, but not limited to, verifying the attestation required under s. 280.025.

2. If the Chief Financial Officer determines that the attestation required under s. 280.025 is materially false, he or she must report such determination to the Attorney General, who may bring a civil or administrative action for damages, injunctive relief, and such other relief as may be appropriate. If such action is successful, the Attorney General is entitled to reasonable attorney fees and costs.

3. As related to federally chartered financial institutions, this paragraph may not be construed to create a power exceeding the visitorial powers of the Chief Financial

Officer allowed under federal law.

(17) Suspend or disqualify or disqualify after suspension any qualified public depository that has violated ~~any of the provisions of~~ this chapter or ~~of~~ rules adopted hereunder or that no longer meets the definition of a qualified public depository under s. 280.02.

(a) Any qualified public depository that is suspended or disqualified pursuant to this subsection is subject to the provisions of s. 280.11(2) governing withdrawal from the public deposits program and return of pledged collateral. Any suspension shall not exceed a period of 6 months. Any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of 1 year from the date of the final order of disqualification or the final disposition of any appeal taken therefrom.

(b) In lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository as provided in s. 280.054.

(c) If the Chief Financial Officer has reason to believe that any qualified public depository or any other financial institution holding public deposits is or has been violating ~~any of the provisions of~~ this chapter or ~~of~~ rules adopted hereunder or no longer meets the definition of a qualified public depository under s. 280.02, he or she may issue to the qualified public depository or other financial institution an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation. If any qualified public depository or other financial institution violates a cease-and-desist or corrective order, the Chief Financial

Officer may impose an administrative penalty upon the qualified public depository or other financial institution as provided in s. 280.054 or s. 280.055. In addition to the administrative penalty, the Chief Financial Officer may suspend or disqualify any qualified public depository for violation of any order issued pursuant to this paragraph.

Section 17. Subsections (14) and (15) are added to section 280.051, Florida Statutes, to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(14) Failed to file the attestation required under s. 280.025.

(15) No longer meets the definition of a qualified public depository under s. 280.02.

Section 18. Paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the

qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation. Failure to timely file the attestation required under s. 280.025 is deemed a knowing and willful violation.

Section 19. Paragraphs (e) and (f) of subsection (1) of section 280.055, Florida Statutes, are amended, and paragraph (g) is added to that subsection, to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; ~~or~~

(f) A qualified public depository; a bank, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order; or

(g) A qualified public depository no longer meets the definition of a qualified public depository under s. 280.02.

Section 20. Section 287.05701, Florida Statutes, is created

to read:

287.05701 Prohibition against considering social, political, or ideological interests in government contracting.—

(1) As used in this section, the term "awarding body" means:

(a) For state contracts, an agency or the department.

(b) For local government contracts, the governing body of a county, a municipality, a special district, or any other political subdivision of the state.

(2)(a) An awarding body may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

(b) An awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

(3) Beginning July 1, 2023, any solicitation for the procurement of commodities or contractual services by an awarding body must include a provision notifying vendors of the provisions of this section.

Section 21. Section 516.037, Florida Statutes, is created to read:

516.037 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a licensee that claims a religious purpose from making such determinations based on the current or prospective customer's religious

beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph.

8. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsections (1) and (2).

(4) In addition to any sanctions and penalties under this chapter, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Notwithstanding s. 501.211, violations

must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 22. Section 560.1115, Florida Statutes, is created to read:

560.1115 Unsafe and unsound practices.—

(1) Licensees must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer and may not engage in an unsafe and unsound practice as provided in subsection (2). This subsection does not restrict a licensee that claims a religious purpose from making such determinations based on the current or prospective customer's religious beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a licensee to deny or cancel its services to a person, or to otherwise discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation,

or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph.

8. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on

characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and upon application for a license or license renewal, applicants and licensees, as applicable, must attest, under penalty of perjury, on a form prescribed by the commission whether the applicant or licensee is acting in compliance with subsections (1) and (2).

(4) In addition to any sanctions and penalties under this chapter, a failure to comply with subsection (1) or engaging in a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Notwithstanding s. 501.211, violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

Section 23. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is amended to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111 or s. 560.1115.

Section 24. Paragraph (y) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(y) "Unsafe or unsound practice" or "unsafe and unsound practice" means:

1. Any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved; or

2. Failure to comply with s. 655.0323(1), or engaging in a practice described in s. 655.0323(2).

Section 25. Section 655.0323, Florida Statutes, is created to read:

655.0323 Unsafe and unsound practices.—

(1) Financial institutions must make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer or member and may not engage in an unsafe and unsound practice as provided

in subsection (2). This subsection does not restrict a financial institution that claims a religious purpose from making such determinations based on the current or prospective customer's or member's religious beliefs, religious exercise, or religious affiliations.

(2) It is an unsafe and unsound practice for a financial institution to deny or cancel its services to a person, or to otherwise discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

(a) The person's political opinions, speech, or affiliations;

(b) Except as provided in subsection (1), the person's religious beliefs, religious exercise, or religious affiliations;

(c) Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

(d) The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

1. The person's political opinions, speech, or affiliations.

2. The person's religious beliefs, religious exercise, or religious affiliations.

3. The person's lawful ownership of a firearm.

4. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

5. The person's engagement in the exploration, production,

utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

6. The person's support of the state or Federal Government in combatting illegal immigration, drug trafficking, or human trafficking.

7. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this paragraph.

8. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

a. Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

b. Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

c. Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

d. Policies or procedures requiring or encouraging employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(3) Beginning July 1, 2023, and by July 1 of each year thereafter, financial institutions subject to the financial institutions codes must attest, under penalty of perjury, on a form prescribed by the commission whether the entity is acting in compliance with subsections (1) and (2).

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(4) Engaging in a practice described in subsection (2) is a failure to comply with this chapter, constitutes a violation of the financial institutions codes, and is subject to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) Notwithstanding ss. 501.211 and 501.212, a failure to comply with subsection (1) or a practice described in subsection (2) constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501. Violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

(6) The office and the commission may not exercise authority pursuant to s. 655.061 in relation to this section.

Section 26. Subsection (5) is added to section 1010.04, Florida Statutes, to read:

1010.04 Purchasing.—

(5) Beginning July 1, 2023, school districts, Florida College System institutions, and state universities may not:

(a) Request documentation of or consider a vendor's social, political, or ideological interests.

(b) Give preference to a vendor based on the vendor's social, political, or ideological interests.

Any solicitation for purchases and leases must include a provision notifying vendors of the provisions of this subsection.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Section 27. For the purpose of incorporating the amendment made by this act to section 17.57, Florida Statutes, in references thereto, subsection (1) of section 17.61, Florida Statutes, is reenacted to read:

17.61 Chief Financial Officer; powers and duties in the investment of certain funds.—

(1) The Chief Financial Officer shall invest all general revenue funds and all the trust funds and all agency funds of each state agency, and of the judicial branch, as defined in s. 216.011, and may, upon request, invest funds of any board, association, or entity created by the State Constitution or by law, except for the funds required to be invested pursuant to ss. 215.44-215.53, by the procedure and in the authorized securities prescribed in s. 17.57; for this purpose, the Chief Financial Officer may open and maintain one or more demand and safekeeping accounts in any bank or savings association for the investment and reinvestment and the purchase, sale, and exchange of funds and securities in the accounts. Funds in such accounts used solely for investments and reinvestments shall be considered investment funds and not funds on deposit, and such funds shall be exempt from the provisions of chapter 280. In addition, the securities or investments purchased or held under the provisions of this section and s. 17.57 may be loaned to securities dealers and banks and may be registered by the Chief Financial Officer in the name of a third-party nominee in order to facilitate such loans, provided the loan is collateralized by cash or United States government securities having a market value of at least 100 percent of the market value of the securities loaned. The Chief Financial Officer shall keep a

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separate account, designated by name and number, of each fund. Individual transactions and totals of all investments, or the share belonging to each fund, shall be recorded in the accounts.

Section 28. For the purpose of incorporating the amendment made by this act to section 215.47, Florida Statutes, in a reference thereto, subsection (3) of section 215.44, Florida Statutes, is reenacted to read:

215.44 Board of Administration; powers and duties in relation to investment of trust funds.—

(3) Notwithstanding any law to the contrary, all investments made by the State Board of Administration pursuant to ss. 215.44-215.53 shall be subject to the restrictions and limitations contained in s. 215.47, except that investments made by the State Board of Administration under a trust agreement pursuant to subsection (1) shall be subject only to the restrictions and limitations contained in the trust agreement.

Section 29. This act shall take effect July 1, 2023.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

APPEARANCE RECORD

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03/29/2023
Meeting Date

Banking and Insurance
Committee

302
Bill Number or Topic

659616
Amendment Barcode (if applicable)

Name Dwight Mattingly

Phone 561 523 0525

Address 8907 SE Pine Cone Lane
Street

Email atul577@bellsouth.net

Hobe Sound FL 33455
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/29/23
Meeting Date

BANKING & INS
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Phone 813 421 5330

Address 3838 W CYPRESS ST
Street

Email advocacy@floridachurches

TPA FL 33607
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3.29.23
Meeting Date

SB 302
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Alexis Underwood

Phone 850 890 3424

Address 3950 Verona Cir
Street

Email Underwoodhome3@gmail.com

PC FL 32405
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/25
Meeting Date

Banking & Ins.
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Phone 850 224 6526

Address 135 S. Monroe
Street

Email

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida AFL-CIO

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3/29/23
Meeting Date

BFT
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Anthony DiMarco

Phone 850-224-2265

Address 100 E Tennessee St

Email adimarco@floridabankers.com

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
FL Bankers Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3-29-23
Meeting Date

Banking Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mary-Elizabeth Estrada

Phone 863-214-0701

Address 15215 livingston Ave Apt 8
Street

Email

Lutz FL 33559
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3-29-23
Meeting Date

Banking Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Briley Nestor

Phone 863-934-0594

Address 1022 Wildwood West
Street

Email brileyn@usf.edu

Lakeland FL 33801
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3-29-23
Meeting Date

Banking Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alejandra Menaez

Phone 7866702559 1

Address 12445 NW 8th AVE
Street

Email Alejandra.menaez2003@mymdc.net

MIAMI FLORIDA 33168
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3/29/23
Meeting Date

Banking and Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Marie Rattigan

Phone 786 930 5070

Address 850 Capital Walk Dr
Street

Email Marie1.Rattigan@gmail.com

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3-29-23
Meeting Date

Banking Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Skylar Elliott Heart

Phone 407-398-215

Address 2502 Lake Debra Drive, #H05
Street

Email skylar.e.heart@gmail.com

Orlando Florida 32835
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3/29/23
Meeting Date

Banking / Insurance
Committee

HB 3 SB 202
Bill Number or Topic

Amendment Barcode (if applicable)

Name Luna Damonte

Phone 904 293 9320

Address 907 Mariana Pl
Street

St. Aug FL 32086
City State Zip

Email lunadamonte04@gmail.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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	SB 302
Meeting Date	Bill Number or Topic
Committee	Amendment Barcode (if applicable)

Name J Ferguson Phone (813) 390-7076

Address 5102 Belmere Pkwy Email jf@dc78.org
Street

Tampa FL 33624
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3/29/23
Meeting Date

Banking and Insurance
Committee

SB 0302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cheyne Steleski

Phone (561) 254-9123

Address 48 SE Sedona Cir Unit 102
Street

Email CSteleski@Gmail.com

Stuart FL 34994
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/29
Meeting Date

Bank+ Insurance ~~Committee~~ Subcommittee
Committee

SB0302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Martha Lamrouex

Phone 786-760-2754

Address 5275 Silverdrift Lane
Street

Email martha.lamrouex@gmail.com

Lake Worth FL 33463
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/29/23
Meeting Date

Banking + Insurance
Committee

SB 0302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Sara Seleski

Phone 352 514 1568

Address 48 SE Sedona Circle #102
Street

Email sarashesaid@gmail.com

Stuart FL 34994
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/29/23
Meeting Date

BANKING & INSURANCE
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name MARCIAL ZACARIAS

Phone 786-308-9480

Address 15372 SW 40th ct
Street

Email Marchitezac@yahoo.com

MIRAMAR FL 33027
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3/29/23
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Banking and Insurance
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jaymes Morris

Phone 561-222-3165

Address 2894 SE 1st PL
Street

Email jaymesmorris@yahoo.com

Boynton Beach FL 33435
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

3/28/23
Meeting Date

Banking and Insurance
Committee

302
Bill Number or Topic

659616
Amendment Barcode (if applicable)

Name Iran Acevedo

Phone (561) 424-1393

Address 3892 Lake Tahoe Cir
Street

Email

WPB FL 33409
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

03/29/23
Meeting Date

Banking & Insurance
Committee

302
Bill Number or Topic

~~302~~
Amendment Barcode (if applicable)

Name SHARON MARAS

Phone 561-537-6989

Address 16393 E. Prestwick DR
Street

Email Sharon-maras@outlook.com

Loxahatchee FL 33470
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking and Insurance
Committee

302
Bill Number or Topic

659616
Amendment Barcode (if applicable)

Name Constance Killings

Phone 5614043734

Address 4310 SW Port Saint Lucie Blvd
Street

Email MS.CKillings@yahoo.com

Port Saint Lucie FL 34953
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3/29/2023
Meeting Date

Banking and Insurance
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Belinda Davis

Phone 561 702-7092

Address 315 N.W. 3rd Ave
Street

Email JohnnyFla315@aol.com

Delray Beach FL 33444
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☑ Against

BO

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3-29-23
Meeting Date

Banking & Ins
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Marcos Estremera

Phone 5616023212

Address 3218 SW Savona Blvd
Street

Email ATU.marcosestremera@gmail.com

PSL FL 34953
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

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S-001 (08/10/2021)

The Florida Senate

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03-29-2023
Meeting Date

Banking & Insurance
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Cheryl Bright

Phone 813 270 6485

Address 3512 Potter St
Street

Email Slomotionn47@Yahoo.com

Tampa Fla 33605
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

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3-29-23
Meeting Date

Banking Insurance
Committee

SB302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alan Blouin

Phone 561.248.0290

Address 6030 14th Place South
Street

Email ablouin@bellsouth.net

W.P.B. Fl. 33415
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

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3/2a/23
Meeting Date

BANKING INSURANCE
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name ROBERTO CRUZ

Phone 561-714-4386

Address 7530 CHICORA CT
Street

LAKE WORTH FL 33467
City State Zip

Email CRUZ_RA1@YAHOO.COM

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/29/23
Meeting Date

Banking & INSurance
Committee

SB 302
Bill Number or Topic

N/A
Amendment Barcode (if applicable)

Name Drew Myers-Li (Lee)

Phone 540-409-7486

Address 14040 Biscayne Blvd. #806
Street

Email drew@CWA3121.com

North Miami FL 33181
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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3/29/23
Meeting Date

SB 302
Bill Number or Topic

Banking Insurance
Committee

Amendment Barcode (if applicable)

Name Curtis Hierro

Phone 407 334 4934

Address 8290 Lake Dr
Street

Email curtishierro@gmail.com

Doral FL 33166
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

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3/29/23
Meeting Date

BANKING INSURANCE
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name JR COSTA

Phone 772-353-1019

Address 995 SW Nichols ter
Street

Port St. Lucie FL 34953
City State Zip

Email JUN770R@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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The Florida Senate

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3/29
Meeting Date

BANKING INS
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name FRANZ DERRA

Phone 561 308 6608

Address 4784 Arthur St
Street

Email franzderra@gmail.com

PBG's FL 33418
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

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The Florida Senate

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3/29/23
Meeting Date

BANKING & INSURANCE
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name DHARMONI THE EVERA

Phone 954.643.3170

Address 1711 SEMORAN N CIR 101
Street

Email dharmonithe1@me.com

WINTER PARK FL 32792
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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3/29/2023
Meeting Date

Banking & Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Waner Joseph

Phone 561-306-4477

Address 4425 Colony View Dr
Street

Email redbomber@hotmail.com

Lake Worth, FL 33463
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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The Florida Senate

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3/29/23
Meeting Date

SB 302
Bill Number or Topic

BANKING AND INSURANCE
Committee

Amendment Barcode (if applicable)

Name GLENDA ABICHT (ABBOTT)

Phone 786-376-1181

Address 4305 SW 98 AV
Street

Email GLENDA.ABICHT@GMAIL.COM

MIAMI FL 33165
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

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S-001 (08/10/2021)

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3/29/23
Meeting Date

Banking Insurance
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pedro Palacios

Phone 786-281-094

Address 1861 Brookshire circle
Street

Email Pdr_Palacios@yahoo.com

Melbourne FL 32904
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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Meeting Date

BANKING & INSURANCE
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name MIGUEL TEJANI

Phone 561-707-1299

Address 1744 PRIMROSE LN
Street

Email miguel.tejani91@gmail.com

WELLINGTON FL 33414
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

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3-29-2023
Meeting Date

BANKING + INSURANCE
Committee

SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name FRANCISCO ANGEL

Phone 708-955-6254

Address 21180 VIA EDEN
Street

BOCA RATON FL 33433
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

3/29/23
Meeting Date

Banking & Insurance
Committee

The Florida Senate

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SB 302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nate Loher

Phone 941-979-6661

Address 810 Susan Drive
Street

Email NMLOHER@GMAIL.COM

Lakeland FL 33803
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

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3-29-2023
Meeting Date

SB 302
Bill Number or Topic

Banking and Insurance
Committee

Amendment Barcode (if applicable)

Name Adam Campbell

Phone (561)452-7748

Address 13800 87th st N
Street

Email

W.P.B FL 33412
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

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S-001 (08/10/2021)

The Florida Senate

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3-29-2023
Meeting Date

banking & insurance
Committee

SB 302
Bill Number or Topic

~~banking & insurance~~
Amendment Barcode (if applicable)

Name Kim Vaughn

Phone 407-556-5974

Address 1422 Illinois Ave
Street

Email muzic407@yahoo.com

St Cloud FL 34769
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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3/29/23
Meeting Date

SB 302
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Mary Burch

Phone 574-261-2175

Address 2811 Krystal Leigh
Street

Email mary.k3.1415@gmail.com

Panama City, FL 32405
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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Meeting Date

302
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Constance Higginbotham

Phone 803-614-2943

Address 3258 Hammock Cove Ct
Street

Email chiggie1951@gmail.com

Middleburg FL 32068
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

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3-29-23
Meeting Date

SB 302
Bill Number or Topic

Banking and Insurance
Committee

Amendment Barcode (if applicable)

Name Roger Simmermaker

Phone 407-234-4626

Address 13112 Aronomink Ln.
Street

Email roger@howtobuyamerica.com

Orlando FL 32828
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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3/29/2023
Meeting Date

Banking & Insurance
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone

Address 579 E. Call St.
Street

Email

Tallahassee, FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Fl Center for Fiscal & Economic Policy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3/29
Meeting Date

Banking & Insurance
Committee

302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Austin Stowers

Phone 850.413.5939

Address PL-11, The Capitol
Street

Email Austin.Stowers@myfloridacfo.com

TLH FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: CFO Patronis

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 6, 2023

I respectfully request that **Senate Bill #302**, relating to Government and Corporate Activism, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Erin K. Grall

Senator Erin Grall
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 302
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call Ingoglia		3/29/2023 2 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 3 Amendment 659616 adopted Grall	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
VA		Ingoglia						
X		Mayfield						
	X	Powell						
	X	Thompson						
	X	Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
8	3	**TOTALS**	FAV	-	FAV	-	RCS	-
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 312
INTRODUCER:	Banking and Insurance Committee and Senator Collins
SUBJECT:	Insurance
DATE:	March 29, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 reduces the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

The bill authorizes an insurer or an agent of the insurer to offer or provide value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy. Such products or services must relate to the insurance coverage and be primarily designed to do one or more of the following:

- Provide loss mitigation or control;
- Reduce claim or claim settlement costs;
- Provide education about liability risks or risk of loss to people or property;
- Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk;
- Enhance health;
- Enhance financial wellness through items such as education or financial planning services;
- Provide post-loss services;
- Incentivize behavioral changes to improve the health, or reduce the risk of death or disability; or
- Assist in the administration of employee or retiree benefit insurance coverage.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2023.

II. Present Situation:

Life Insurance Agents

Section 626.7851, F.S., sets forth education or experience requirements for becoming a life insurance agent. Requirements include:

- Successful completion of 40 hours of coursework in life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Successful completion of at least 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Earned or maintained an active designation as Chartered Financial Consultant from the American College of Financial Services; or Fellow, Life Management Institute from the Life Management Institute;
- Held an active license in life insurance in another state, where such state grants reciprocal treatment to Florida licensees; or
- Been employed full time by the DFS or OIR in life insurance regulatory matters for at least one year if the application for the examination is made within four years after leaving employment and if the employee was not terminated for cause.

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,[1] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance and prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance.[2] It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination.

There are also many exceptions to the prohibitions defined by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to $100 per calendar year to an insured, prospective insured, or any person for the purpose of advertising.[3] Insurers are allowed to offer and give

[1] Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.
[2] Section 626.9541, F.S.
[3] Rule 69B-186.010, F.A.C., Unlawful Rebates and Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. s. 2607 (2017).

insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.[4] There are several similar limitations on advertising gifts under the Florida Insurance Code related to the advertising practices of title insurance agents, agencies and insurers, public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.[5]

A person who commits acts prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to $5,000 for each nonwillful violation, and up to $40,000 for each willful violation.[6] However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.[7] Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of up to $5,000 for each nonwillful violation, and up to $75,000 for each willful violation.[8]

Anti-Rebating Laws

Rebating is the practice whereby an agent or broker reduces or shares their commission with an insured as way to induce a customer to purchase an insurance policy. Historically, rebates were used in the life insurance industry.[9] However, anti-rebate laws began to be enacted when rebates began to threaten the solvency of life insurance companies and raised questions around unfair discriminatory practices.[10] Supporters of the laws argued it kept the consumer's focus on a product's merits, not on the size of the rebate. Opponents suggested the laws infringed on their rights to competition and stifled innovation. Today, most states have enacted anti-rebate statutes and many have enacted the National Association of Insurance Commissioners' (NAIC) Unfair Trade Practices Act (Model #880) created in 1945. The Model Act provides a uniform framework for the state related to anti-rebating issues and concerns. Over time, numerous exceptions have been enacted to these laws. The most common exceptions are for promotion items, referrals, raffles, charity donations and value-added services.

Rebates are common in many industries, but they present a different set of issues in the insurance area. This is due to a number of reasons:

- In other industries, the rebate is typically offered by the manufacturer directly. For insurance products, the rebate is offered by an intermediary (the agent).

[4] Section 626.9541(5), F.S.
[5] Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of $25 as an inducement to contract. Section 626.854(9), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. Section 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of $25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. Section 634.282, F.S.
[6] Section 626.9521(2), F.S.
[7] *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.
[8] Section 626.9521(3)(b), F.S.
[9] *Time to Dust Off the Anti-Rebate Laws*, Journal of Insurance Regulation, 2017, https://content.naic.org/sites/default/files/jir-za-36-07-el-dust-off-anti-rebate.pdf (last accessed March 24, 2023).
[10] *Time to Dust Off the Anti-Rebate Laws - Summary*, National Association of Insurance Commissioners, https://content.naic.org/sites/default/files/cipr-brief-time-dust-anti-rebate-laws.pdf (last accessed March 24, 2023).

- Insurance rates are set by filing with the state regulators and have the cost of agent commissions built in to the premium. If an agent has the capacity to give a rebate on the commission, it may be considered as a factor that the rate is too high.
- Giving rebates on insurance products to the policyholder is not transparent. This may give the agent an advantage over other agents, but does not affect competition between insurers themselves rebating could lead to unfair price discrimination.

Emerging technologies and innovations create new challenges and opportunities regrading insurance products and anti-rebating laws.[11] Value-added services encompass many of the emerging technologies used for risk management and identification, such as water sensors given to homeowners for early detection of water damage or tracking shipping containers. There is substantial movement to update the anti-rebating laws to strike a new balance between protecting the consumer and allowing for innovation.

The NAIC updated its Model Act in 2020 with a substantial rewrite to Section 4(H) regarding anti-rebating.[12] Nine states have enacted some form of the updated rebating provisions - Connecticut, Georgia (property and casualty), Kansas, Nebraska, New Mexico, North Dakota, Ohio, Rhode Island, and Vermont. Indiana has adopted provisions from the National Council of Insurance Legislators' Model Act.[13] Eight states are currently pursuing legislation - Florida, Georgia (life), Hawaii, Iowa, Maryland, Oklahoma, South Dakota, and Wyoming.[14]

A Timeline of Anti-Rebating[15]

• 1887 – Massachusetts enacts the first anti-rebating statute.
• 1889 – New York enacts an anti-discrimination law mandating equal treatment of individuals in the same actuarial class.
• 1895 – Thirty insurers enter into an anti-rebating agreement disallowing the practice by agents.
• 1945 – The federal McCarran-Ferguson Act[16] is passed, and the NAIC develops Model #880.
• 1988 – California repeals anti-rebating with the passage of Proposition 103.
• 1990 – Florida amends the anti-rebating law, keeping rebating illegal but allowing specific exceptions.
• 2009 – present – A wave of states begin raising monetary limits for promotional items, clarifying and revising rules for value-added services, and carving out additional exceptions to anti-rebating laws.

[11] *Id.*
[12] *Unfair Trade Practices Act*, National Association of Insurance Commissioners, https://content.naic.org/sites/default/files/inline-files/MO880%20-%202020%20revisions-12042020_As_Amended.pdf (last accessed March 24, 2023).
[13] *Rebate Reform Model Act*, National Council of Insurance Legislators, https://ncoil.org/wp-content/uploads/2020/05/NCOIL-Rebate-Reform-Model-FINAL-3-8-20-3.pdf (last accessed March 24, 2023).
[14] Information provided by email to Committee staff by the NAIC on February 6, 2023 (on file with the Committee on Banking and Insurance).
[15] *See, Time to Dust Off the Anti-Rebate Laws – Summary* fn 86.
[16] 5 U.S. Code section 1011 et seq. Section 1011 of the Act provides "that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."

• 2019 – The Innovation and Technology (EX) Task Force begins discussion of anti-rebating amendments to Model #880.
• 2020 – The NAIC updates the anti-rebate provisions of Model #880.

III. Effect of Proposed Changes:

Life Insurance Agents

Section 1 amends s. 626.7851, F.S., to reduce the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

Unfair Insurance Trade Practices

Section 2 amends s. 626.9541, F.S., to adopt the NAIC Model Act provisions revising anti-rebating laws. The bill provides that it is not considered discrimination or an unlawful rebate by an insurer or an agent of the insurer, including by or through employees, affiliates, or third-party representatives, to offer value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

- Provide loss mitigation or loss control;
- Reduce claim costs or claim settlement costs;
- Provide education about liability risks or risk of loss to persons or property;
- Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- Enhance health;
- Enhance financial wellness through items such as education or financial planning services;
- Provide post-loss services;
- Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder, potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or
- Assist in the administration of employee or retiree benefit insurance coverage

The bill provides further that:

- The cost of the value-added product or service to the insurer or agent must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.
- The insurer or agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.
- The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the insurer or agent and produced upon request by the OIR or the Department of Financial Services (DFS).
- If an insurer or agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets the specified criteria, the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. An insurer or agent must notify the OIR or the DFS, as

applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The insurer or agent may commence the program unless the OIR or the DFS, as applicable, objects to the program within 21 days after receiving the notice.

- An insurer, agent, or a representative may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free," "no cost," or similar words in an advertisement.

The bill grants rulemaking authority to the Financial Services Commission to administer these provisions to ensure consumer protection by addressing, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has an indeterminate direct economic impact on the private sector, but the provision of value added products and services may lead to reduced claim costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 626.7851 and 626.9541.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on March 29, 2023:
The committee substitute makes the following changes:

- Removed provisions in the bill that authorized a life insurer, long-term care insurer, or a disability income insurer authorized to do business in this state to use genetic information for underwriting purposes if the genetic information is contained in the applicant's medical record.
- Removed language describing particular value-added products or services that was redundant of, and potentially conflicted with, existing provisions in the Act regarding gifts given by insurers to policyholders.
- Adds a new section amending s. 626.7851, F.S., to reduce the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts - from 40 hours to 30 hours.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2023	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Collins) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the

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date the application for a license is filed with the department he or she has:

(1) Successfully completed 30 ~~40~~ hours of coursework in life insurance, annuities, and variable contracts approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as Chartered Financial Consultant (ChFC) from the American College of Financial Services; or Fellow, Life Management Institute (FLMI) from the Life Management Institute;

(4) Held an active license in life insurance in another state. This provision may not be used unless the other state grants reciprocal treatment to licensees formerly licensed in the state; or

(5) Been employed by the department or office for at least 1 year, full time in life insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

Prelicensure coursework is not required for an applicant who is



a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 2. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) *Unlawful rebates.*—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:

a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities

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of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a



salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the



title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

4.a. Paragraph (g) or subparagraph 1. may not be construed as including within the definition of discrimination or unlawful rebates the offer or provision by an insurer or an agent of the insurer, including by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

(I) Provide loss mitigation or loss control;

(II) Reduce claim costs or claim settlement costs;

(III) Provide education about liability risks or risk of loss to persons or property;

(IV) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(V) Enhance health;

(VI) Enhance financial wellness through items such as education or financial planning services;

(VII) Provide post-loss services;

(VIII) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder,


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potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or

(IX) Assist in the administration of employee or retiree benefit insurance coverage.

b. The cost to the insurer or agent offering the product or service to a customer must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.

c. If the insurer or agent is providing the product or service, the insurer or agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

d. The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the insurer or agent and produced upon request by the office or the department.

e. If an insurer or agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets any of the criteria in sub-sub-subparagraphs a.(I)-(IX), the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. An insurer or agent must notify the office or department, as applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The insurer or agent may commence the program unless the office or department, as applicable, objects to the program within 21 days after receiving the notice.

f. An insurer, agent, or representative thereof may not



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offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free," "no cost," or similar words in an advertisement.

g. The commission may adopt rules to administer this subparagraph to ensure consumer protection. Such rules, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to insurance; amending s. 626.7851, F.S.; revising a minimum coursework qualification for licensure as a life agent; amending s. 626.9541, F.S.; providing that certain restrictions against unfair discrimination or unlawful rebates do not include value-added products or services offered or provided by insurers or their agents if certain conditions are met; providing requirements for and restrictions on insurers or agents offering or providing such products or services; authorizing insurers or agents to provide such products or services as part of a pilot or testing program under certain circumstances; authorizing the Financial Services Commission to adopt rules; providing an effective date.

By Senator Collins

14-00841-23 2023312__

A bill to be entitled

An act relating to insurance; amending s. 627.4301, F.S.; revising restrictions on the use of genetic information for insurance purposes by life insurers and long-term care insurers; specifying a restriction on and an authorized use of genetic information for insurance purposes by disability income insurers; deleting a provision construing certain actions by life insurers and long-term care insurers; amending s. 626.9541, F.S.; providing that certain restrictions against unfair discrimination or unlawful rebates do not include value-added products or services offered or provided by insurers or their agents if certain conditions are met; providing requirements for and restrictions on insurers or agents offering or providing such products or services; authorizing insurers or agents to provide such products or services as part of a pilot or testing program under certain circumstances; specifying authorized value-added products and services; authorizing the Financial Services Commission to adopt rules; providing an effective date.

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

Section 1. Subsection (2) of section 627.4301, Florida Statutes, is amended to read:

627.4301 Genetic information for insurance purposes.—

(2) USE OF GENETIC INFORMATION.—

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

14-00841-23 2023312__

(a) In the absence of a diagnosis of a condition related to genetic information, health insurers~~, life insurers, and long-term care insurers~~ authorized to transact insurance in this state may not cancel, limit, or deny coverage, or establish differentials in premium rates, based on such information.

(b) Health insurers~~, life insurers, and long-term care insurers~~ may not require or solicit genetic information, use genetic test results, or consider a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

(c) A life insurer, long-term care insurer, or disability income insurer authorized to transact insurance in this state:

1. May not cancel coverage based on genetic information; require an applicant to take a genetic test as a condition of insurability; or obtain, request, or otherwise require the complete genome sequence of an applicant's DNA.

2. May use genetic information for underwriting purposes only if the genetic information is contained in the applicant's medical record.

(d) This section does not apply to the underwriting or issuance of an accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy or any other actions of an insurer directly related to an accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy.

~~(d) Nothing in this section shall be construed as preventing a life insurer or long-term care insurer from accessing an individual's medical record as part of an application exam. Nothing in this section prohibits a life~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~insurer or long-term care insurer from considering a medical diagnosis included in an individual's medical record, even if a diagnosis was made based on the results of a genetic test.~~

Section 2. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) *Unlawful rebates.*—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:

a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney,

agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney fee, any portion of the premium that is

not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

4.a. Paragraph (g) or subparagraph 1. may not be construed as including within the definition of discrimination or unlawful rebates the offer or provision by an insurer or an agent of the insurer, including by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

(I) Provide loss mitigation or loss control;

(II) Reduce claim costs or claim settlement costs;

(III) Provide education about liability risks or risk of loss to persons or property;

(IV) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(V) Enhance health;

(VI) Enhance financial wellness through items such as education or financial planning services;

(VII) Provide post-loss services;

(VIII) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder, potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or

(IX) Assist in the administration of employee or retiree benefit insurance coverage.

b. The cost to the insurer or agent offering the product or service to a customer must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.

c. If the insurer or agent is providing the product or service, the insurer or agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

d. The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the insurer or agent and produced upon request by the office or the department.

e. If an insurer or agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets any of the criteria in sub-sub-subparagraphs a.(I)-(IX), the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. An insurer or agent must notify the office or department, as applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The insurer or agent may commence the program unless the office or department, as applicable, objects to the program within 21 days after receiving the notice.

f. An insurer, agent, or representative thereof may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free," "no cost," or similar words in an advertisement.

g. For purposes of this subparagraph, value-added products

and services may include:

(I) Offering or giving noncash gifts, items, or services, including meals to or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of contracts of insurance, provided the cost does not exceed an amount determined to be reasonable by commission rule per policy year per term. The offer must be made in a manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service.

(II) Offering or giving noncash gifts, items, or services, including meals to or charitable donations on behalf of a customer, to commercial or institutional customers in connection with the marketing, sale, purchase, or retention of contracts of insurance, provided the cost is reasonable in comparison to the premium or proposed premium and the cost of the gift or service is not included in any amounts charged to another person or entity. The offer must be made in a manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service.

(III) Conducting raffles or drawings permitted by state law, provided there is no financial cost to entrants for participating, the raffle or drawing does not obligate entrants to purchase insurance, the prizes are not valued in excess of a reasonable amount as determined by commission rule, and the raffle or drawing is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory. The entrant may not be required to purchase, continue to

purchase, or renew a policy in exchange for the gift, item, or service.

h. The commission may adopt rules to administer this subparagraph to ensure consumer protection. Such rules, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3. This act shall take effect July 1, 2023.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/22
Meeting Date

Bond
Committee

312
Bill Number or Topic

Amendment Barcode (if applicable)

Name Daniel Olson

Phone

Address 306 S. Duval St.
Street

Email

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Insurance Council

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/2023
Meeting Date

Banking + Insurance
Committee

SB 312, as amended
Bill Number or Topic

705828
Amendment Barcode (if applicable)

Name Curt Leonard

Phone 850-274-1422

Address 150 S Monroe St. Suite 206
Street

Email curtleonard@acli.com

Tall FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: American Council of Life Insurers

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/2023
Meeting Date

Banking + Insurance
Committee

SB 312, as amended
Bill Number or Topic

Amendment Barcode (if applicable)

Name Robert Hawken

Phone 850-509-5900

Address 150 S Monroe St, Suite 300
Street

Email hawk@leathfl.com

Tall. FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Insurance Council

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 312
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 2 Amendment 705828 adopted Collins			
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
X		Ingoglia						
X		Mayfield						
X		Powell						
X		Thompson						
X		Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
11	0	**TOTALS**	FAV	-	RCS	-		
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 580
INTRODUCER:	Banking and Insurance Committee and Senator Gruters
SUBJECT:	Consumer Finance Loans
DATE:	March 29, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.			AEG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 580 revises laws governing consumer finance loans, which are loans of $25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

The bill increases the maximum interest rate that may be charged to 36 percent per annum. Current law limits consumer finance loan interest rates to no more than 30 percent per annum, computed on the first $3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and up to $25,000.

The bill increases the number of days that a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

The bill revises the licensure process to allow a single licensure application for the principle place of business and all branches. The bill defines a "branch" as any location, other than a licensee's principal place of business, at which a licensee operates or conducts consumer finance loan business or controls for the purpose of conducting consumer finance loan business.

The bill requires consumer finance lenders, in any county designated in a Federal Emergency Management Agency (FEMA) major disaster declaration, to suspend the following for 90 days after the initial date of such declaration:

- The application of delinquency charges for payments in default for at least 10 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to:

- Provide notice to the Office of Financial Regulation (OFR) of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration.
- Annually report information to the OFR detailing the loans issued by the lender during the previous calendar year.

The effective date of the bill is July 1, 2023.

II. Present Situation:

The Office of Financial Regulation's (OFR) Division of Consumer Finance (Division) licenses and regulates non-depository financial service entities and individuals, and conducts investigations of licensed entities to determine their compliance with Florida law.[1] One such product regulated by the OFR is consumer finance loans. A consumer finance loan is a loan of money, credit, goods, or interests valued at $25,000 or less with permitted interest rates of between 18 and 30 percent per year.[2] This is not a traditional loan made by a bank, credit union, or similar institution. The consumer finance lenders do not accept deposits, and earn their revenue from the fees charged on the loans they make.[3]

Licensure

Entities that engage in the business of making consumer finance loans must be licensed by the OFR pursuant to the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Each location of a consumer finance lender must be separately licensed, even if the separate locations are operated by the same business entity.[4]

A consumer finance lender applicant must submit an application fee of $625 and an investigation fee of $200 with its application for licensure.[5] Consumer finance lender licenses granted under

[1] Fla. Office of Fin. Reg, *Division of Consumer Finance: What We Do*, https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm (last visited March 27, 2023).
[2] Sections 516.01(2) and 516.031(1), F.S. *See also*, Fla. Office of Fin. Reg, Consumer Finance Companies, https://flofr.gov/sitePages/ConsumerFinanceCompanies.htm (last visited March 27, 2023).
[3] Naveen Reddy, *What are the Primary Functions of Finance Companies?* (Nov. 9, 2020), https://smallbusiness.chron.com/primary-functions-finance-companies-40480.html (last visited March 27, 2023). Also note, payday lenders are separately regulated pursuant to ch. 560, F.S.
[4] Sections 516.01(6) and 516.05(3), F.S.
[5] Section 516.03(1), F.S. *See also*, Fla. Office of Fin. Reg., *Form OFR-516-01 Application for Consumer Finance Company License*, https://flofr.gov/sitePages/documents/OFR-516-01.pdf (last visited March 27, 2023).

the Act must be renewed every two years, at which time the licensee must pay a $625 biennial license fee.[6]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[7]

Permissible Interest Rates and Fees

Florida's prohibition on usury generally prohibits[8] interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.[9] Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the following limits, which are based on the amount of the loan's principal:[10]

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following:[11]

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation, if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed, of up to $15 for payments due monthly, $7.50 for payments due semimonthly or every 2 weeks, and $5 if three payments are due in the same calendar month; and
- A bad check charge of up to $20.

[6] Sections 516.03(1) and 516.05(1) & (2), F.S.
[7] Section 516.02(4), F.S.
[8] Various lenders and credits licensed or chartered under the laws of the United States or specified chapters of the Florida Statutes may charge interest at the maximum rate of interest permitted by law for similar loans or extensions of credit. *See* s. 687.12(1), F.S.
[9] Sections 687.02 and 687.12, F.S.
[10] Section 516.031(1), F.S.
[11] Section 516.031(3), F.S.

A consumer finance lender may offer optional credit property, credit life, and disability insurance at the borrower's expense via a deduction from the principal amount of the loan.[12]

Licensees under ch. 516, F.S., are expressly prohibited from charging prepayment penalties on consumer finance loans.[13]

III. Effect of Proposed Changes:

SB 580 revises laws governing consumer finance loans, which are loans of $25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

The bill increases the maximum interest rate that may be charged to 36 percent per annum. Current law limits consumer finance loan interest rates to no more than 30 percent per annum, computed on the first $3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and up to $25,000.

The bill increases the number of days that a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

The bill revises the licensure process to allow a single licensure application for the principal place of business and all branches. The bill defines a "branch" as any location, other than a licensee's principal place of business, at which a licensee operates or conducts consumer finance loan business or controls for the purpose of conducting consumer finance loan business.

The bill requires consumer finance lenders, in any county designated in a Federal Emergency Management Agency (FEMA) major disaster declaration, to suspend the following for 90 days after the initial date of such declaration:

- The application of delinquency charges for payments in default for at least 10 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to provide notice to the OFR of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration.

The bill requires consumer finance licensees to annually report aggregated and anonymized data that does not reference any borrower's nonpublic personal information to the OFR detailing the loans issued by the lender during the previous calendar year. The report must include:

- The number of licenses held by the licensee as of December 31.
- The number of loan originations by the licensee under all licenses.

[12] Section 516.35(2), F.S.
[13] Section 516.031(6), F.S.

- The total dollar amount of loans and the number of loans outstanding by the licensee as of December 31.
- The total number of loans in which the licensee holds a security interest in collateral as of December 31.
- The total number of unsecured loans as of December 31.
- The total number of loans, separated by principal amount, in the following ranges as of December 31:
  - Up to and including $5,000.
  - $5,001 to $10,000.
  - $10,001 to $15,000.
  - $15,001 to $20,000.
  - $20,001 to $25,000.
- The total number and amount of loans charged off as of December 31.
- The total dollar amount of loans and the number of loans with delinquency status listed as:
  - Current or less than 30 days past due.
  - From 30 to 589 days past due.
  - From 60 to 89 days past due.
  - At least 90 days past due.

Licensees claiming any information submitted in the report is a trade secret must submit to the OFR an affidavit and designated the information claimed to be a trade secret in accordance with s. 655.0591, F.S. The OFR may publish a report using the annual report data, provided that all data published in the report is anonymized and aggregated from all licensees.

The effective date of the bill is July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill allows the OFR to publish a report of information submitted by consumer finance lenders detailing their lending activities during the prior calendar year, "provided that all data published in the report is anonymized and aggregated from all licensees." However, the lack of a public records exemption related to the reports submitted by insurers may result in the OFR having to provide the reports of individual lenders to a person making such a public records request. The report in each consumer finance lender's report to the OFR could receive trade secret protection to the extent the lender, pursuant to s. 655.0591, F.S., claims a trade secret and is successful in obtaining a declaratory judgment from a circuit court that the documents in question constitute protected trade secrets.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in more consumer finance loans being issued by Florida-licensed consumer finance lenders to borrowers who cannot currently qualify for loans given the current interest rate limits. However, such borrowers will be subject to greater interest payments than are allowed under current law.

C. Government Sector Impact:

The OFR estimated "its revenues may decrease by as much as $5,000 per fiscal year if it no longer receives the background investigation fee of $200 required for each additional location" once the current licensure process is "replaced by a branch office license requirement." The OFR stated that the reduction, "would not impact the OFR's operation" and that "the reduction in staff time no longer needed to review a full license application for each additional location when replaced with a branch office license would likely offset any loss in revenues."[14]

The OFR also noted that the bill "would require the OFR to make technology changes to its internal licensing system to create a branch office license and annual reporting functionality" but believe that "the cost of these changes would be negligible and can be covered within the OFR's existing budget."[15]

VI. Technical Deficiencies:

None.

[14] Office of Financial Regulation, *2023 Agency Legislative Bill Analysis of SB 580*, pg. 5, February 2023 (on file with the Senate Banking and Insurance Committee).
[15] *See id* at pg. 6.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.01, 516.02, 516.03, 516.031, and 516.15.
This bill creates the following sections of the Florida Statutes: 516.38 and 516.39.
This bill reenacts the following sections of the Florida Statutes: 516.19.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 29 2023:
The committee substitute clarifies what constitutes an assistance program offered by a consumer finance lender in response to a disaster subject to a FEMA major disaster declaration, requires additional reporting regarding the length of loan delinquencies, and clarifies the application of the bill's requirement that consumer finance lenders suspend for 90 days after a FEMA major disaster declaration the application of delinquency charges, collateral repossessions, and civil actions for collections.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

747392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2023	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 229 - 277
and insert:

For purposes of this subsection, assistance programs may include, but are not limited to, deferments, forbearance, waiver of late fees, payment modification, or changing payment due dates.

Section 6. Section 516.38, Florida Statutes, is created to

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read:

516.38 Annual reports by licensees.—

(1) By March 15, 2024, and each March 15 thereafter, a licensee shall file a report with the office in a form and manner prescribed by commission rule. The report must include each of the items specified in subsection (2) for the preceding calendar year using aggregated and anonymized data and without reference to any borrower's nonpublic personal information.

(2) The report must include the following information for the preceding calendar year:

(a) The number of locations held by the licensee under this chapter as of December 31 of the preceding calendar year.

(b) The number of loan originations by the licensee from all licenses held under this chapter during the preceding calendar year.

(c) The total dollar amount of loans and the number of loans outstanding with the licensee from all licenses held under this chapter as of December 31 of the preceding calendar year.

(d) The total dollar amount of loans and the number of loans in which the licensee holds a security interest in collateral as of December 31 of the preceding calendar year.

(e) The total dollar amount of loans and the number of unsecured loans as of December 31 of the preceding calendar year.

(f) The total number of loans, separated by principal amount, in the following ranges as of December 31 of the preceding calendar year:

1. Up to and including $5,000.

2. Five thousand and one dollars to $10,000.

747392

3. Ten thousand and one dollars to $15,000.

4. Fifteen thousand and one dollars to $20,000.

5. Twenty thousand and one dollars to $25,000.

(g) The total dollar amount of loans and the number of loans charged off as of December 31 of the preceding calendar year.

(h) The total dollar amount of loans and the number of loans with delinquency status listed as:

1. Current or less than 30 days past due.

2. From 30 to 59 days past due.

3. From 60 to 89 days past due.

4. At least 90 days past due.

(3) A licensee claiming that any information submitted in the report contains a trade secret must submit to the office an accompanying affidavit in accordance with s. 655.0591 and designate the information claimed to be a trade secret pursuant to s. 655.0591.

(4) The office may publish a report of information submitted pursuant to this section, provided that all data published in the report is anonymized and aggregated from all licensees.

Section 7. Section 516.39, Florida Statutes, is created to read:

516.39 Suspension of penalties and remedial measures after federal disaster declaration.—If the Federal Emergency Management Agency issues a major disaster declaration for a county, a licensee operating in that county designated in the

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

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And the title is amended as follows:

Delete line 19

and insert:

timeframe; providing construction; creating s. 516.38, F.S.; requiring

By Senator Gruters

22-00502B-23 2023580__

A bill to be entitled

An act relating to consumer finance loans; reordering and amending s. 516.01, F.S.; defining the term "branch"; amending s. 516.02, F.S.; prohibiting a person from operating a branch of a business making consumer finance loans before obtaining a license from the Office of Financial Regulation; amending s. 516.03, F.S.; specifying application fees for branch licenses; revising the applicability of investigation fees; making a technical change; amending s. 516.031, F.S.; revising the maximum interest rate and the calculation of interest rates on consumer finance loans; revising the minimum amount of time before which a delinquency charge for each payment in default may be imposed; amending s. 516.15, F.S.; requiring licensees offering an assistance program to borrowers after a federally declared major disaster to send a specified notice to the office within a certain timeframe; creating s. 516.38, F.S.; requiring licensees to file annual reports with the office; providing for rulemaking by the Financial Services Commission; specifying requirements for the reports; providing requirements for a licensee claiming that submitted information contains a trade secret; authorizing the office to publish a report in a certain manner; creating s. 516.39, F.S.; requiring certain licensees to suspend specified actions for a certain timeframe after a federally declared disaster; reenacting s. 516.19, F.S., relating to penalties, to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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incorporate the amendments made to ss. 516.02 and 516.031, F.S., in references thereto; providing an effective date.

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

Section 1. Section 516.01, Florida Statutes, is reordered and amended to read:

516.01 Definitions.—As used in this chapter, the term:

(1) "Branch" means any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under this chapter or which the licensee owns or controls for the purpose of conducting business under this chapter.

(3)~~(1)~~ "Consumer finance borrower" or "borrower" means a person who has incurred either direct or contingent liability to repay a consumer finance loan.

(4)~~(2)~~ "Consumer finance loan" means a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.

(2)~~(3)~~ "Commission" means the Financial Services Commission.

(9)~~(4)~~ "Office" means the Office of Financial Regulation of the commission.

(6)~~(5)~~ "Interest" means the cost of obtaining a consumer finance loan and includes any profit or advantage of any kind

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whatsoever that a lender may charge, contract for, collect, receive, or in anywise obtain, including by means of any collateral sale, purchase, or agreement, as a condition for a consumer finance loan. Charges specifically permitted by this chapter, including commissions received for insurance written as permitted by this chapter, shall not be deemed interest.

(7) ~~(6)~~ "License" means a permit issued under this chapter to make and collect loans in accordance with this chapter at a single place of business.

(8) ~~(7)~~ "Licensee" means a person to whom a license is issued.

(5) ~~(8)~~ "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

Section 2. Subsection (1) of section 516.02, Florida Statutes, is amended to read:

516.02 Loans; lines of credit; rate of interest; license.—

(1) A person must not engage in the business of making

consumer finance loans or operate a branch of such business unless she or he is authorized to do so under this chapter or other statutes and unless the person first obtains a license from the office.

Section 3. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements of s. 516.05(10). At the time of making such application, the applicant shall pay to the office a nonrefundable biennial license fee of $625 for the principal place of business and for each branch application filed.

Applications for a license for the principal place of business~~,~~ ~~except for applications to renew or reactivate a license,~~ must also be accompanied by a nonrefundable investigation fee of $200. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this chapter ~~act~~ if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 4. Subsection (1) and paragraph (a) of subsection (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 36 ~~30~~ percent per annum~~, computed~~ on ~~the first $3,000 of~~ the principal amount~~; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and~~ up to $25,000. The original principal amount as used in this section is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining

compliance with the statutory maximum interest and finance charges set forth herein, the computations used shall be simple interest and not add-on interest or any other computations. ~~If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.~~

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges provided in this section, further or other charges or amount for any examination, service, commission, or other thing or otherwise may not be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount of up to $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each line-of-credit account;

3. Charges paid for the brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security if paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation if secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan if the premium does not exceed the fees which would otherwise be payable, which may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge for each payment in default for at least 12 ~~10~~ days if the charge is agreed upon, in writing, between the parties before imposing the charge. Delinquency charges may be imposed as follows:

a. For payments due monthly, the delinquency charge for a payment in default may not exceed $15.

b. For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.

c. For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

Any charges, including interest, in excess of the combined total

of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days after the discovery of such error.

Section 5. Subsection (5) is added to section 516.15, Florida Statutes, to read:

516.15 Duties of licensee.—Every licensee shall:

(5) If the Federal Emergency Management Agency issues a major disaster declaration for this state and if a licensee offers an assistance program to borrowers impacted by the disaster, within 10 days after the licensee's establishment of the program, send written notice to the office in either physical or electronic format and include the following information, subject to change as any additional declarations are issued or declarations are revoked:

(a) The licensed locations affected by the disaster declaration, including physical addresses, if applicable;

(b) The telephone number, e-mail address, or other contact information for the licensee;

(c) A brief description of the assistance program available to borrowers in the affected areas; and

(d) The start date, and end date if known, of the assistance program.

Section 6. Section 516.38, Florida Statutes, is created to read:

516.38 Annual reports by licensees.—

(1) By March 15, 2024, and each year thereafter, a licensee

shall file a report with the office in a form and manner prescribed by commission rule. The report must include each of the items specified in subsection (2) for the preceding calendar year using aggregated and anonymized data and without reference to any borrower's nonpublic personal information.

(2) The report must include the following information for the preceding calendar year:

(a) The number of licenses held by the licensee under this chapter as of December 31 of the preceding calendar year.

(b) The number of loan originations by the licensee from all licenses held under this chapter during the preceding calendar year.

(c) The total dollar amount of loans and the number of loans outstanding by the licensee from all licenses held under this chapter as of December 31 of the preceding calendar year.

(d) The total number of loans in which the licensee holds a security interest in collateral as of December 31 of the preceding calendar year.

(e) The total number of unsecured loans as of December 31 of the preceding calendar year.

(f) The total number of loans, separated by principal amount, in the following ranges as of December 31 of the preceding calendar year:

1. Up to and including $5,000.

2. Five thousand and one dollars to $10,000.

3. Ten thousand and one dollars to $15,000.

4. Fifteen thousand and one dollars to $20,000.

5. Twenty thousand and one dollars to $25,000.

(g) The total number and amount of loans charged off as of

December 31 of the preceding calendar year.

(3) A licensee claiming that any information submitted in the report contains a trade secret must submit to the office an accompanying affidavit in accordance with s. 655.0591 and designate the information claimed to be a trade secret pursuant to s. 655.0591.

(4) The office may publish a report of information submitted pursuant to this section, provided that all data published in the report is anonymized and aggregated from all licensees.

Section 7. Section 516.39, Florida Statutes, is created to read:

516.39 Suspension of penalties and remedial measures after federal disaster declaration.—If the Federal Emergency Management Agency issues a major disaster declaration for this state, a licensee operating in a county designated in the declaration must suspend for a period of 90 days after the date of the initial declaration the following:

(1) The application of delinquency charges under s. 516.031(3)(a)9.

(2) Repossessions of collateral pledged to loans made under this chapter.

(3) The filing of civil actions for the collection of amounts owed for loans made under this chapter.

Section 8. For the purpose of incorporating the amendments made by this act to sections 516.02 and 516.031, Florida Statutes, in references thereto, section 516.19, Florida Statutes, is reenacted to read:

516.19 Penalties.—Any person who violates any of the

provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6), or s. 516.07(1)(e) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. This act shall take effect July 1, 2023.

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2023 AGENCY LEGISLATIVE BILL ANALYSIS
Florida Office of Financial Regulation

BILL INFORMATION	
BILL NUMBER:	SB 580
BILL TITLE:	An Act Relating to Consumer Finance Loans
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	July 1, 2023

COMMITTEES OF REFERENCE
1) Banking and Insurance
2) Appropriations Committee on Agriculture, Environment, and General Government
3) Fiscal Policy
4)
5)

CURRENT COMMITTEE
Banking and Insurance

SIMILAR BILLS	
BILL NUMBER:	none
SPONSOR:	

IDENTICAL BILLS	
BILL NUMBER:	none
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	2/X/23
LEAD AGENCY ANALYST:	Gregory Oaks, Director, Division of Consumer Finance
ADDITIONAL ANALYST(S):	Ann Michelle Palecki, Assistant General Counsel
LEGAL ANALYST:	Anthony Cammarata, General Counsel
FISCAL ANALYST:	

POLICY ANALYSIS

A. EXECUTIVE SUMMARY

SB 580 amends the Florida Consumer Finance Act to create a process for licensees to operate branches and simplifies the application process for licensees who wish to operate more than one location. Penalties for violations of the chapter have been accordingly reincorporated. The bill also replaces the current sliding scale of maximum interest rates for consumer finance loans based upon loan amount with a flat maximum interest rate, and raises the maximum interest rate by a minimum of 6 percent. Next, the bill creates several sections of law applicable in the event of a major disaster declaration by FEMA. It creates a notification process whereby a licensee must notify the OFR of any assistance plan offered to those affected by the disaster. It also suspends the application of delinquency charges, repossessions of collateral, and filing of civil actions for collection of amounts owed for 90 days after such a declaration. Finally, it requires a licensee to submit an annual report containing information regarding their loans. Such reports are aggregated and anonymized, and may not contain any non-public personal information of borrowers. The OFR is permitted to publish a report based upon this information, provided the report is aggregated and anonymized among licensees.

The bill provides an effective date of July 1, 2023.

B. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR has three divisions: the Division of Consumer Finance, the Division of Financial Institutions, and the Division of Securities. The OFR also has a Bureau of Financial Investigations, which functions as a criminal justice agency and has a separate budget.[2]

OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including consumer finance loans, which are governed by chapter 516, Florida Statutes, the "Florida Consumer Finance Act." Loans permitted under the Act are commonly referred to as "consumer finance loans", which are defined as "a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[3] Licensees are issued a license that is a permit to make and collect loans in accordance with the Act at a single place of business.[4] Consumer finance loans may be secured if over $1000, or unsecured, but licensees are prohibited from taking a security interest in certain types of collateral, such as an assignment of wages, commissions, or other compensation for services, earned or to be earned.

A licensee may lend any sum of money up to $25,000.[5] The maximum interest rates for consumer finance loans are dependent upon the amount of the loan. A maximum interest rate of 30 percent per annum may be charged for the first $3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and up to $25,000.[6] The original principal amount utilized in the Act is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.[7]

On July 27, 2020, the OFR published a Consumer Finance Company Survey Data Report. As of this data, the OFR had 167 consumer finance license holders. Of the 167 license holders, only 26% returned a completed survey. The Data report shows the average number of loans outstanding in 2018 as 7,949 loans, with an average dollar amount of loans outstanding of $42,042,015.

Trade Secret Information

[1] Section 20.121(3)(a)2., Florida Statutes.
[2] *Id*.
[3] Section 516.01(2), Fla. Stat.
[4] Section 516.01(6), Fla. Stat.
[5] Section 516.031(1), Fla. Stat.
[6] Section 516.031(1), Fla. Stat.
[7] *Id.*

OFR's Division of Financial Institutions provides general supervision over all state financial institutions, their subsidiaries, and service corporations,[8] and is charged with the administration of the financial institutions codes, which apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions.[9] The financial institutions codes include chapters 655, 657, 658, 660, 662, 663, 665, and 667, Florida Statutes.[10]

Section 655.0591, Florida Statutes, provides a mechanism by which any person required to submit documents or materials to the OFR to claim that the materials are trade secret. To make such a claim, a person must notify the OFR, mark each section of each document it claims to be a trade secret with the words "trade secret", segregate it from other materials in a sealed envelope marked trade secret, and submit a form affidavit to the OFR. Such notice must contain the name and contact information of the person claiming ownership of the trade secret. If the OFR receives a public record request for a document that has been duly submitted as trade secret, the OFR must promptly notify the person who certified the document as trade secret. To avoid disclosure of the trade secret, the person must file an action in circuit court within 30 days after the date of the notice seeking a declaratory judgment that the document in question contains trade secrets and an order barring public disclosure of the document. Failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the OFR shall release the document as requested.

2. EFFECT OF THE BILL:

Section 1 renumbers section 516.01, Florida Statutes, and creates a new subsection (1) to define the term "branch." The term is defined as any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under chapter 516 or which the licensee owns and controls for the purpose of conducting such business.

Section 2 amends subsection 516.02(1), Florida Statutes, to require authorization under chapter 516 and licensure to operate a branch for the business of making consumer finance loans.

Section 3 amends subsection 516.03(1), Florida Statutes, to specify application fees under a branching model. Whereas current law requires a new application for each location, licensees are now authorized to have a principal place of business and one or more branches. The current nonrefundable biennial license fee of $625 for each application now applies to both the principal place of business and to each branch application filed. Line 117 limits the nonrefundable investigation fee of $200, which currently applies to each application, to applications for a license for a principal place of business. Line 125 makes a technical change.

Section 4 amends subsection 516.031(1), Florida Statutes, to replace the sliding scale of maximum interest rate charges with a flat maximum rate. Currently, the maximum interest rate for a loan made under chapter 516 is 30 percent per annum computed on the first $3,000, 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000, and 18 percent per annum on that part of the principal amount exceeding $4000 up to $25,000. The bill replaces this sliding scale with a flat maximum interest rate of 36%. Lines 148-156 amend subsection (1) to make conforming changes. This section also amends subparagraph 516.031(3)(a)9., Florida Statutes, to extend the period of time that must pass before a licensee can charge a customer a delinquency charge from 10 to 12 days.

Section 5 creates subsection 516.15(5), Florida Statutes, to require a licensee, under certain circumstances, to notify the OFR of any assistance program it plans to offer upon a major disaster in this state. In the event that the Federal Emergency Management Agency (FEMA) issues a major disaster declaration for Florida, and if a licensee offers an assistance program to borrowers impacted by the disaster, a licensee may establish an assistance program, but must notify the OFR in writing of such program within 10 days of establishment. The following information must be included: licensed locations affected by the disaster declaration, the telephone number, e-mail address, or other contact information for the licensee, a brief description of the assistance program available, the start date, and the end date of the program if known.

Section 6 creates section 516.38, Florida Statutes, to require an annual report by licensees. The report must be filed in a form and manner prescribed by commission rule, which will require rulemaking. The first report is due on March 15, 2024, and each year thereafter. The report must contain each of the following for the proceeding calendar year, using aggregated and anonymized data and without reference to any borrower's nonpublic personal information: the number of licenses held by the licensee, the total number of loan originations from all licenses held by licensee, the total dollar amount of loans and the number of loans outstanding, the total number of loans in which the licensee holds a security interest, the total number of unsecured loans, the total number of loans within certain dollar amount ranges, and the total number and amount of loans charged off. A licensee that claims any information

[8] Section 655.012(1), Fla. Stat.
[9] Sections 655.001(1) and 655.012(1), Fla. Stat.
[10] Section 655.005(1)(k), Fla. Stat.

in the report is a trade secret must so designate that information and submit to the OFR an affidavit in accordance with s. 655.0591, Florida Statutes. Subsection (4) permits the OFR to publish a report of such information, provided that all data published is anonymized and aggregated from all licensees.

Section 7 creates section 516.39, Florida Statutes, to suspend the application of delinquency charges, repossessions of collateral, and filing of civil actions for collection of amounts owed under certain circumstances. In the event that FEMA issues a major disaster declaration for this state, a licensee operating in a county designated in the declaration must suspend the application of the above stated remedies for a period of 90 days following such a declaration.

Section 8 reenacts the penalties contained in section 516.19, Florida Statutes, for violation of certain sections of chapter 516 for the purpose of incorporating the amendments made by the bill to the relevant sections.

Section 9 provides an effective date of July 1, 2023.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	Lines 232-234 create a new section of statute that will require a licensee to file an annual report with the office "in a form and manner prescribed by permission rule." This section will require rulemaking. Rule 69V-160.111, F.A.C., which adopts a Disciplinary Guidelines for Consumer Finance Companies, will also require an update.
Is the change consistent with the agency's core mission?	Y☒N☐
Rule(s) impacted (provide references to F.A.C., etc.):	69V-160.111

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	The bill does not require, but permits, the OFR to publish a report of information contained in the annual reports of licensees, provided that all data published in such report is anonymized and aggregated from all licensees.
Date Due:	unknown
Bill Section Number(s):	6

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	

Bill Section Number(s):	

FISCAL ANALYSIS

1. FISCAL IMPACT TO LOCAL GOVERNMENT

Y☐ N☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. FISCAL IMPACT TO STATE GOVERNMENT

Y☒ N☐

Revenues:	The OFR estimates its revenues may decrease by as much as $5000 per fiscal year if it no longer receives the background investigation fee of $200 required for each additional location once replaced by a branch office license requirement. This is a negligible and would not impact the OFR's operation. Additionally, the reduction in staff time no longer needed to review a full license application for each additional location when replaced with a branch office license would likely offset any loss in revenues.
Expenditures:	None
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. FISCAL IMPACT TO THE PRIVATE SECTOR

Y☒ N☐

Revenues:	Unknown
Expenditures:	The industry will no longer be required to pay a $200 background investigation fee for each additional location with the implementation of a branch office license. This may save the industry up to $5,000 per fiscal year in reduced fees.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y☒ N☐

If yes, explain impact.	The bill proposes to create a branch license in lieu of a full license for each additional location of a consumer finance company. The branch license will not include the $200 background investigation fee and result in a fee reduction.
Bill Section Number:	Section 3

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	The proposed bill would require the OFR to make technology changes to its internal licensing system to create a branch office license and annual reporting functionality. The cost of these changes would be negligible and can be covered within the OFR's existing budget.

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

Lines 212-228: the term "assistance program" is not defined. While the Office of Financial Regulation (OFR) is not tasked with approving the assistance program, it is unclear how the OFR will determine whether a program is actually an assistance program that may be noticed to the OFR pursuant to s. 516.15(5). Further, it is unclear whether the major disaster declaration must be applicable to the whole state of Florida or just part of it.

Line 232: It is unclear whether the deadline will be March 15th of each year.

Line 246: This line references "loans outstanding by the licensee." Use of the term "with" instead of "by" may provide clarity.

Line 268-271: Subsection (4) permits but does not obligate the OFR to publish a report containing information from annual reports of licensees, provided that all data published in the report is anonymized and aggregated from all licensees. As there is no public records exemption for the annual reports submitted by licensees, the requirement to anonymize and aggregate the data from all licensees will not protect information regarding or identifying the licensee from the disclosure requirements of chapter 119, Florida Statutes. Each annual report submitted will remain public record, and thus, the requirement to anonymize and aggregate data likely will not achieve the apparent goal of protecting licensee information.

Lines 274-277: The bill currently reads that if FEMA "issues a major disaster declaration for this state, a licensee operating in a county designated in the declaration must suspend…." Confusion may be eliminated if it were clear whether the declaration must be for the whole state, or for one or many counties in the state.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	OGC has reviewed the agency's bill analysis concerning SB 580, and the analysis sufficiently details the effect of the bill and the areas of impact. OGC has no additional issues, concerns or further comments regarding the bill.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

S.B. & I.
Committee

580
Bill Number or Topic

747392
Amendment Barcode (if applicable)

Name Scott Jenkins

Phone 850 661 0829

Address 201 E. Park Ave. Suite 200B
Street

Email Scott@dacpl.com

Tall FL 32301
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FL Financial Services Assoc.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking and Insurance
Committee

SB 580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Austin Clancy

Phone 814-942-2493

Address 100 International Dr.
Street

Email austin.clancy@omficm

Baltimore MD 21202
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

3/29/23
Meeting Date

BANKING & INS
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Phone 813 421 5330

Address 3838 W CYPRESS ST
Street

Email advocacy@floridachurches.org

TPA FL 33607
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FLORIDA COUNCIL OF CHURCHES

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/2023
Meeting Date

Banking & Insurance
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone

Address 579 E. Call St.
Street

Email fcfep@yahoo.com

Tallahassee, FL 32301
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: FL Center for Fiscal & Economic Policy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

S. Banking & Insurance
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Scott Jenkins

Phone 850 661 0829

Address 201 E. Park Ave Suite 200B
Street

Email scott@dacfl.com

TLH FL 32312
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FL Financial Services Assoc.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Insurance & Banking
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 407 312 5374

Address 201 W Park Ave
Street

Email carnold@flaccb.org

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Conference of Catholic Bishops

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking and Insurance
Committee

Consumer
CRA 580 finance
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ananth Solache

Phone 305-528-8495

Address 7785 fairway drive
Street

Email Ananth Solache 96@gmail.com

Miami lakes, FL, 33014
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Catalyst miami

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/29/23
Meeting Date

Banking + Insurance
Committee

SB 580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Crystal Morales

Phone 305 924 4385

Address 9021 SW 156 St
Street
Miami FL 33157
City State Zip

Email Crystallegalaid@gmail.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking & Insurance
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michelle Goodman

Phone 786-387-3013

Address 1322 NE 117th St
Street

Email mrsmyg@yahoo.com

Miami FL 33161
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Catalyst

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

03/29/23
Meeting Date

Banking and Insurance
Committee

SB 580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kerlande K. Ceant

Phone 954 865 2487

Address 3330 NW 23rd CT
Street

Email KerlandeKceant@gmail.com

Coconut Creek FL 33066
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: Catalyst Miami

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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3.29.23
Meeting Date

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SB 580
Bill Number or Topic

Banking and Insurance
Committee

Amendment Barcode (if applicable)

Name Taylor Neverman

Phone 850 510 3589

Address 468 NE 206th Ln #108
Street

Email Neverman.Taylor@gmail.com

Miami FL 33179
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: Catalyst Miami

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3/29/2023
Meeting Date

BANKING & INSURANCE
Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SB580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Gena Grant

Phone 786 608 2414

Address 62 NW 16 1st
Street

Email MSBARR38@gmail.com

Miami FL 33169
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
CataLyst Miami

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S-001

Set the record straight.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Finance & insurance
Committee

SB 580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christian Perez Chavez

Phone 305 322 0834

Address 20710 Leeward Ln
Street

Email christianperez@gmail.com

Cutler Bay FL 33189
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/2023
Meeting Date

Banking and Insurance
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Korene Stuart

Phone 305 684-8986

Address 7771 Indigo St
Street

Email korene17@gmail.com

Miramar FL 33023
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Catalyst Miami

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

03/29/2023
Meeting Date

SB 580
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Regina Silas

Phone 305 206 2091

Address 18015 NW 25th Ct
Street

Email

Miami Gardens FL 33056
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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29 April 2023
Meeting Date

Banking & Insurance
Committee

580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Camilo Mejia

Phone 786 302 8842

Address 3462 Frow Ave
Street

Miami FL 33132
City State Zip

Email camilom@catalystmiami.org

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

03/22/23
Meeting Date

SB 580
Bill Number or Topic

Banking and Insurance
Committee

Amendment Barcode (if applicable)

Name Enilda Hidalgo

Phone (787) 461-5283

Address 2301 SW 7 St
Street

Email enildahg@gmail.com

Miami FL 33135
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Catalyst Miami

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3-29-23
Meeting Date

Banking & Insurance
Committee

SB 580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alecia Tramel-McIntyre

Phone 305-494-4538

Address 2930 NW 184th Street
Street

Email aleciatramel@gmail.com

Miami FL 33055
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Catalyst Miami

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

March 29, 2023
Meeting Date

Banking Insurance
Committee

SB 580
Bill Number or Topic

Amendment Barcode (if applicable)

Name Harold McIntyre

Phone 786 488 1153

Address 2955 N.W. 184 St
Street

Email Aachie380941

Miami FL 33056
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Catalyst

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S-001 (08/10/21)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 580
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 2 Amendment 747392 adopted Gruters			
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
	X	Ingoglia						
X		Mayfield						
X		Powell						
	X	Thompson						
	X	Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
8	3	**TOTALS**	FAV	-	RCS	-		
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 600
INTRODUCER:	Judiciary Committee and Senator Martin
SUBJECT:	Assignment for the Benefit of Creditors
DATE:	March 29, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Fav/CS**
2.	Thomas	Knudson	BI	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 600 amends several statutes within chapter 727, F.S., relating to assignments for the benefit of creditors. The bill's revisions were recommended by a subcommittee of the Business Law Section of The Florida Bar to streamline practice, clarify ambiguities in the statute, and minimize the potential for litigation.

Specifically, the bill:

- Revises the legislative intent of ch. 727, F.S., relating to assignments for the benefit of creditors, to include the orderly liquidation of insolvent estates.
- Grants assignees discretion on how to record assignments both inside and outside of this state where relevant assets are located.
- Grants courts discretion to schedule case management conferences and require periodic status reports as warranted.
- Provides that assignees may rely upon, and will not be held personally liable for, their own good faith compliance with court documents and other documents believed to be genuine.
- Provides that assignees will not be held personally liable for:
  - Complying in good faith with their duties and responsibilities as assignees; or
  - Acts or omissions, unless those acts or omissions were outside the scope of their duties, were grossly negligent, or constitute malfeasance.
- Provides that, unless assignees' acts or omissions subject them to personal liability, creditors asserting claims against them must look only to the estate assets and posted bonds to recover.

- Provides that, before bringing a suit against an assignee, a creditor must first obtain leave of the court based upon an act or omission by that assignee subjecting it to personal liability.
- Requires any claims against an assignee to be brought before the assignee is discharged by the court.
- Clarifies that only creditors holding a lien or a right of setoff or recoupment with respect to the subject assets – i.e. not all creditors – are exempt from requirements to turn the assets over to the assignee.
- Provides for negative notice in connection with assignees' rejection of unexpired leases of nonresidential property or of personal property, and flexibility regarding the effective date.

The bill takes effect on July 1, 2023.

II. Present Situation:

Assignment for the Benefit of Creditors

An assignment for the benefit of creditors (an "ABC") is a voluntary state law remedy for the administration of an insolvent estate.[1] It is an alternative to bankruptcy and allows a debtor to voluntarily assign its assets to a third party in order to liquidate the assets to fully or partially satisfy creditors' claims against the debtor.[2] The process is designed to provide impartial transparency to creditors while an independent fiduciary liquidates the debtor's estate for their benefit under court supervision.[3]

An ABC is similar to federal bankruptcy proceedings in that it allows the liquidation of a debtor's property for an equal distribution to creditors.[4] However, the ABC process tends to be significantly less expensive and time consuming than federal bankruptcy.[5] It is also distinguishable from federal bankruptcy in that it does not impose an automatic stay of collection efforts in favor of the debtor, and it does not discharge the debtor from its debt.[6]

In Florida, the original act authorizing ABCs was enacted in 1889.[7] The constitutionality of the act was affirmed by the Florida Supreme Court in 1896.[8] Similar acts have been upheld by the

[1] ABC Statute Revision Subcommittee, the Business Law Section of the Florida Bar, *White Paper: Analysis of Proposed Revisions to Chapter 727 (Assignments for the Benefit of Creditors)*, June 2022 (on file with the Senate Committee on Judiciary).
[2] *Hillsborough County v. Lanier*, 898 So. 2d 141, 143 (Fla. 2d DCA 2005).
[3] ABC Statute Revision Subcommittee, *supra* note 1, at 1.
[4] Henry P. Trawick, Jr., *Trawick's Florida Practice and Procedure*, s. 38:18 (2022-2023 ed., Nov. 2022 update) (noting that a general assignment for the benefit of creditors "accomplishes the same result as a [federal] bankruptcy").
[5] ABC Statute Revision Subcommittee, *supra* note 1, at 1.
[6] The Business Law Section of The Florida Bar, *Support for Proposed Amendments to Chapter 727 – Assignments for the Benefit of Creditors* (undated), at 1-2 (on file with the Senate Committee on Judiciary).
[7] Chapter 3891, Laws of Fla.
[8] *See Rosenheim v. Morrow*, 37 Fla. 183, 187-88 (1896) (finding that "the several states of the American Union have power to enact insolvent or bankruptcy laws, applicable within their respective territories, so long as the congress of the United States abstains from exercising its exclusive power to provide a general bankruptcy law"); *see also Dorr v. Schmidt*, 38 Fla. 354, 359 (Fla. 1896) (noting that the Florida Supreme Court held the law to be constitutional in *Rosenheim*).

U.S. Supreme Court and other state courts.[9] The Legislature substantially re-drafted the act in 1987[10] and has amended it many times since, most recently in 2013.[11]

Intent and Definitions

The intent of chapter 727, F.S., the laws governing ABCs, is to provide a uniform procedure for the administration of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets according to priorities established under the chapter.[12]

Chapter 727, F.S., includes definitions for the following terms: "asset," "assignee," "assignor," "assignment," "claims bar date," "consensual lienholder," "court," "creditor," "estate," "filing date," "lien," "liquidation value," "negative notice," and "petition."[13] With relevance to the bill, "negative notice" means a notice which, unless a response is filed within 21 days after the date of service, allows certain actions in the notice to occur.[14]

Commencement of an ABC Action

An ABC action commences when an insolvent debtor (i.e. an assignor)[15] makes an irrevocable assignment to an assignee[16] of all of its assets in writing, and in substantial accordance with the statutory form.[17] The assignment must annex certain schedules that have been verified under oath. The schedules must also be in substantial accordance with statutory forms. Schedule A is a list of the assignor's known creditors, and Schedule B is a list of all of the assets of the estate.[18]

The assignee must, within 10 days after delivery of the assignment to the assignee:

- Record the original assignment in the public records of the county in which the assignor had its principal place of business and, soon afterwards, record a certified copy of the assignment in each county where assets of the estate are located.[19]
- File a petition that:
  - Provides the names and addresses of the assignor and the assignee.
  - Includes a copy of the assignment, together with Schedules A and B.
  - Requests that the court fix the amount of the assignee's bond to be filed with the clerk of the court.[20]

[9] *See, e.g., Pobreslo v. Joseph M. Boyd Co.,* 287 U.S. 518, 526 (1933) (finding that "it is apparent that Congress intended that such voluntary assignments … should be regarded as not inconsistent with the purposes of the federal act"); *In re Mader's Store for Men, Inc.*, 77 Wis. 2d 578, 592 (Wis. 1977) (citing *Pobreslo* on this point).
[10] *See* ch. 87-174, Laws of Fla. (substantially revising or creating ss. 727.01-727.16, F.S.).
[11] Chapter 2013-244, Laws of Fla.
[12] Section 727.101, F.S.
[13] Section 727.103, F.S.
[14] Section 727.103(13), F.S.; *see also* s. 727.111(4), F.S. (providing for negative notice in connection with specified actions).
[15] "Assignor" means one who transfers property rights or powers to another. BLACK'S LAW DICTIONARY (11th ed. 2019).
[16] "Assignee" means one to whom property rights or powers are transferred by another. BLACK'S LAW DICTIONARY (11th ed. 2019).
[17] Section 727.104(1)(a)-(b), F.S.
[18] Section 727.104(1)(c)-(e), F.S.
[19] Section 727.104(2)(a), F.S.
[20] Section 727.104(2)(b), F.S.

The bond must be payable to the clerk of the court, in an amount that is not less than $25,000 or double the liquidation value of the unencumbered and liquid assets of the estate identified in Schedule B, whichever is higher, conditioned upon the assignee's faithful discharge of its duties. The assignee must file the bond with the clerk of court within 30 days after the court enters an order setting the amount of the bond.[21]

The petition must be filed in accordance with the procedures for filing a complaint as provided in the Florida Rules of Civil Procedure, and may be filed in any of the following offices of the clerk of court:

- The county of the assignor's place of business, if it has one.
- The county of its chief executive office, if it has more than one place of business.
- The county of the assignor's residence, if the assignor is an individual not engaged in business.[22]

The assignee must give notice of the assignment. The notice must contain certain information and be published once a week for 4 consecutive weeks, with the first notice being published within 10 days after the assignee files the petition. The assignee must also mail notice to all known creditors within 20 days after filing the petition.[23]

Proceedings against an Assignee

A lawsuit may not be commenced against an assignee except as otherwise provided in chapter 727, F.S. Except in the case of a consensual lienholder enforcing its rights in personal property or real property collateral, there may be no levy, execution, attachment, or the like on account of any judgment against assets of the estate in the possession, custody, or control of the assignee.[24]

Duties and Procedures

Any person or entity – other than a creditor that is in possession, custody, or control of assets of the estate – must, upon notice by the assignee of the assignment proceeding, promptly turn over such assets to the assignee or the assignee's duly authorized representative.[25]

In connection with an ABC, assignors[26] and assignees[27] have certain statutory duties they must fulfill, and courts are afforded certain specified powers.[28] For example, to the extent reasonable in the exercise of an assignee's business judgment, an assignee must reject an unexpired lease of nonresidential real property or of personal property under which the assignor is the lessee,[29] and the court has the power to authorize that rejection.[30]

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[21] *Id.*
[22] *Id.*
[23] Section 727.111(1), F.S.
[24] *See* s. 727.105, F.S. (noting also that nothing in the chapter affects any action or proceeding brought by a governmental unit to enforce its police or regulatory power).
[25] Section 727.106, F.S.
[26] *See generally* s. 727.107, F.S.
[27] *See generally* s. 727.108, F.S.
[28] *See generally* s. 727.109, F.S.
[29] Section 727.108(5), F.S.
[30] Section 727.109(6), F.S.

With respect to an assignee's duty to reject unexpired leases of nonresidential real property or of personal property, the assignee must file a notice of rejection with the court and serve a copy on the owner or lessor of the affected property and, for personal property, on the landlord of the premises on which the property is located.[31]

The notice of rejection must identify the affected property, the address at which the affected property is located, the name and telephone number of the person in possession of the affected property, and the deadline for removal of the affected property.[32] The rejection is effective the date the court enters an order authorizing it. If the lessor of the affected property fails to take possession after notice of the rejection, the estate's rights and obligations to, and liability for, the property terminate upon the effective date of the rejection.[33]

Claims

Claims must satisfy statutory requirements.[34] Proof of claims by creditors must be filed within 120 days after the petition is filed unless extended for cause shown. A duly-filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim.[35]

Any time before the entry of an order approving the assignee's final report, the assignee or any party in interest may file with the court an objection to a claim. A copy of the objection must be served on the concerned creditor. Claims properly filed with the assignee and not disallowed by the court constitute all claims entitled to distribution from the estate.[36] The priority of claims is prescribed by statute.[37]

Discharge

The court may remove or replace the assignee for any of the reasons identified in the statute. If a replacement is needed, the court must appoint the replacement.[38]

When the administration of the estate has been completed, the assignee must file a petition for discharge attaching a final report that includes all receipts and disbursements of the estate.[39] The assignee must give at least 20 days' notice of the petition for discharge to the assignor and all creditors; the notice must include a summary of all receipts and disbursements of the estate.[40]

Upon approval of the final report, the court must discharge the assignee and release its bond. The assignee's discharge has the effect of releasing it from any duties, liabilities, and responsibilities as assignee pursuant to the provisions of the assignment and chapter 727, F.S.[41]

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[31] Section 727.110(3)(a), F.S.
[32] *Id.*
[33] Section 727.110(3)(b)-(c), F.S.
[34] *See generally* s. 727.112, F.S.
[35] Section 727.112(2) and (5), F.S.
[36] Section 727.113(1), F.S.
[37] *See generally* s. 727.114, F.S.
[38] Section 727.115(1)-(2), F.S.
[39] Section 727.116(1)-(2), F.S.
[40] Section 727.111(5), F.S.
[41] Section 727.116(3)-(4), F.S.

III. Effect of Proposed Changes:

In 2021, the Business Law Section of The Florida Bar formed an ABC Statute Revision Subcommittee for the purpose of evaluating the potential need for revisions to chapter 727, F.S.[42] Following multiple meetings and analyses, the subcommittee has recommended several changes that form the basis of the bill.[43]

Intent

The subcommittee recommended revising s. 727.101, F.S., which provides the legislative intent of chapter 727, F.S., to bring the purpose of the statute more in line with the current use of assignment proceedings: the orderly liquidation of insolvent estates.[44] Consistent with this recommendation, the bill revises the statute to read that the intent of the chapter is to provide a uniform procedure for the administration *and orderly liquidation* of insolvent estates.

Recordation of Assignments

The subcommittee has noted that unlike in Florida, where virtually any document can be recorded, some counties in other states cannot accept assignment documents for recording in the public records. And with respect to some assignments, the assignment documents and schedules can be voluminous, resulting in significant administrative expenses and recording fees.[45]

The subcommittee therefore recommended revising s. 727.104, F.S., regarding the commencement of proceedings, to provide the assignee discretion in determining whether to record full schedules with the assignment; to allow an alternative recording procedure in counties where recordation in the public records is not possible; and to provide that a good faith effort by the assignee to comply with the recording requirement will be sufficient.[46]

Consistent with these recommendations, the bill amends the statute to provide that in connection with assignee's recordation of the original assignment:

- The original assignment may be recorded with or without the schedules.
- A certified copy of the assignment must be recorded, with or without the schedules, in each county in Florida in which real property assets of the estate are located.
- A certified copy of the assignment must be recorded, without schedules, in the land records of each recording jurisdiction outside of Florida in which real property assets of the estate are located.

The bill also provides that if a certified copy of the assignment is not acceptable for recording in a particular location, the assignee must record a lis pendens or similar notice of action referencing the pending assignment proceedings. In either instance, the recorded original

[42] ABC Statute Revision Subcommittee, *supra* note 1, at 1. The ABC Statute Revision Subcommittee was comprised of nearly 30 experienced insolvency professionals located throughout the state. *Id.*
[43] *See* ABC Statute Revision Subcommittee, *supra* note 1, at 1-2.
[44] *Id.* at 2.
[45] *Id.* at 3.
[46] *Id.*

assignment, certified copy of the assignment, or lis pendens or similar notice of action must include the legal description of any real property in the recording jurisdiction.

Case Management Conferences and Status Reports

The subcommittee has noted that the Florida Supreme Court recently amended Florida Rule of Civil Procedure 1.200 to require courts to convene case management conferences to better manage their dockets. However, this has led to a practice of requiring monthly conferences in some courts, which can be costly and ineffective in assignment cases, and can even lead to the premature closure of some of them. Conversely, although assignment cases are designed to progress quickly for the benefit of creditors, some cases move slowly due to a lack of communication between creditors as to the status of liquidation.[47]

To address both problems, the subcommittee recommended further revising s. 727.104, F.S., by adding a new subsection that grants courts the discretion to set status conferences or require status reports by an assignee only as warranted, governed by the circumstances of the particular assignment case.[48]

Consistent with this recommendation, the bill provides that the court may determine proper compliance with Rule 1.200, Florida Rules of Civil Procedure, in an action filed under chapter 727, F.S., including, but not limited to, scheduling a case management conference and requiring a periodic status report as warranted by the circumstances of the case.

Actions against Assignees

The subcommittee has noted that s. 727.105, F.S., which addresses proceedings against the assignee and protects the assets of the estate in the possession of the assignee from levy, execution, attachment, or similar procedure, does not directly address the scope of an assignee's personal liability. It therefore recommended language addressing the issue, including language providing that assignees are only liable for acts taken outside of their authority or that constitute gross negligence or malfeasance. It also recommended including a requirement that creditors and parties in interest obtain leave of the court to sue an assignee.[49]

Consistent with these recommendations, the bill provides that in any action against an assignee, the assignee may:

- Rely on any outstanding court orders, judgments, decrees, and rules of law, and is not personally liable for the assignee's own good faith compliance with any such orders, judgments, decrees, or rules of law.
- Rely on, and will be protected in any action by, any resolution, certificate, statement, opinion, report, notice, consent, or other document believed by the assignee to be genuine and to have been signed or presented by the proper parties.

Moreover, the assignee will not be found personally liable for:

[47] *Id.* at 3.
[48] *Id.*
[49] *Id.* at 4.

- The assignee's good faith compliance with his or her duties and responsibilities as an assignee.
- The assignee's acts or omissions, except upon a finding by the court presiding over an action or proceeding under chapter 727, F.S., that the assignee's acts or omissions:
  - Were outside the scope of his or her duties;
  - Were grossly negligent; or
  - Constitute malfeasance.

The bill further provides that unless such a finding is made, any creditor or party in interest seeking to assert a claim against the assignee must look only to the assignment of estate assets and any bond posted by the assignee to satisfy any liability, and the assignee is not personally liable to satisfy any such obligation. Additionally, any creditor or party in interest seeking to assert a claim against the assignee must first obtain leave of the court presiding over the action or proceeding based on a finding that the assignee's act or omissions were outside the scope of his or her duties, were grossly negligent, or constitute malfeasance.

Any claim against the assignee, or against any agent or professional of the assignee who assists the assignee in the administration of the estate, must be brought before the discharge of the assignee to the extent the claim has accrued and is predicated upon facts that are known or reasonably should have been known at the time of the discharge, at which point all such claims are deemed released and forever barred.

The bill also provides that the revised statute does not alter or limit any other immunity otherwise held by the assignee, or any agent or professional of the assignee who assists the assignee in the administration of the estate.

Turnover of Estate Property

The subcommittee identified what it calls a "glitch" in s. 727.106, F.S. That statute generally requires a person or entity, upon notice of the assignment proceeding, to turn over the assets of the estate to the assignee – but it exempts creditors in possession, custody, or control of assets of the estate. Based upon a plain reading of the statute, a person holding an unliquidated or disputed claim in the assignment proceedings could refuse to turn over estate property based on his or her status as a creditor, but the subcommittee has noted that this is not the intended result of the statute; instead, only a narrower class of creditor, i.e. a creditor *holding a lien or right of set off or recoupment against the asset being held,* should qualify for the exemption.[50]

Consistent with this concern, the bill revises the statute to clarify that only creditors holding a lien or a right of setoff or recoupment with respect to the subject assets (not all creditors) are exempt from having to turn over assets to the assignee upon notice by the assignee of the assignment proceeding.

[50] *Id.* at 5-6.

Lease Rejection and Landlord/Lessor Administrative Expense Accrual

Section 727.110, F.S., provides that an assignee's rejection of an unexpired lease of nonresidential property or of personal property is effective on the date that the court enters an order authorizing the rejection. The subcommittee observed, however, that even if a motion is uncontested, state courts often schedule hearings months after a motion is filed. As a result, there is often a gap period between the filing of the motion to reject, and the entry of the order, which enables landlords or equipment lessors to pursue post-assignment administrative rent claims – even if an assignee has vacated the premises or has abandoned the leased equipment as of the filing of the motion.[51]

To correct the situation, the subcommittee recommends amending the statute to give assignment courts more flexibility in setting the effective date of the rejection and in approving lease rejection procedures. It also recommends explicitly allowing lease rejection to be done on negative notice because doing so would promote judicial economy, save assignment estate resources from unnecessary administrative claims, and avoid unnecessary hearings in situations where there are no significant objections to the lease rejection.

Consistent with these concerns, the bill revises the statute to provide that as to an assignee's rejection of an unexpired lease of nonresidential real property or of personal property, the assignee must serve a copy of the notice or rejection (that it filed with the court) by negative notice on the owner or lessor of the affected property and, for personal property, on the landlord of the premises on which the property is located. Additionally, the bill provides that the effective date of the rejection is the date of entry of a court order authorizing such rejection, unless the court orders otherwise.

Effective Date

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[51] *Id.* at 6-7.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will positively impact assignees by granting them discretion in determining whether to record full schedules with the original assignment. If assignees decide against recording full schedules with the original assignment, fewer administrative costs and fees associated with assignment recordation will be paid.

The bill will grant assignment courts more flexibility in setting the effective date of assignees' rejection of unexpired leases of nonresidential property or of personal property. Earlier effective dates will result in fewer post-assignment administrative rent claims that assignees will be forced to defend in court, thereby reducing assignees' legal fees and costs.

The bill will positively impact assignees by allowing the giving of negative notice in connection with assignees' rejections of unexpired leases of nonresidential property or of personal property. Explicitly allowing negative notice will eliminate some administrative claims and avoid unnecessary hearings in situations where there are no significant objections to the lease rejection, thereby reducing legal fees and costs.

The bill will positively impact all parties to an assignment proceeding by granting courts the discretion to decide how often to hold status conferences or require status reports in assignment proceedings. Granting this discretion to courts will likely result in fewer conferences and reports, which will decrease legal fees and costs for all parties.

The bill will negatively impact creditors and parties in interest wishing to assert a claim against assignees, because the bill will require them to obtain leave of court before filing suit, which they are not currently required to do. Thus, creditors and parties in interest will incur new legal fees and costs in those situations.

C. Government Sector Impact:

The bill will positively impact courts by granting them the discretion to decide how often to hold status conferences or require status reports in assignment proceedings, which will decrease courts' workload over current conditions and promote judicial economy.

The bill will positively impact courts by allowing the giving of negative notice in connection with assignees' rejections of unexpired leases of nonresidential property or of personal property. Explicitly allowing negative notice will avoid unnecessary hearings in situations where there are no significant objections to the lease rejection, which will decrease courts' workload over current conditions and promote judicial economy.

The bill will negatively impact local government revenues because assignees are likely to record fewer assignment-related documents (i.e. schedules) than they currently do, which means recording offices will recover less in recordation fees.

The bill will require creditors and parties in interest wishing to assert a claim against assignees to first obtain leave of court before filing suit, which they are not currently required to do. Accordingly, the bill will negatively impact courts because the bill will increase their workload over current conditions.

Ultimately, with respect to the anticipated judicial or court workload impact, the Office of the State Courts Administrator has indicated that it is indeterminate. Although the specific extent of the impact is difficult to determine, the bill is likely to have an impact on judicial workload due to case management conferences; the ordering and review of periodic status reports; any challenges to the assignee's actions or claims; and review of the notice of rejection.[52]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 727.101, 727.104, 727.105, 727.106, and 727.110.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 21, 2023:

- Requires the assignee to promptly record:
  - A certified copy of the assignment, with or without schedules, in each county in Florida in which real property assets of the estate are located.

[52] Office of the State Courts Administrator, *2013 Judicial Impact Statement for SB 600* (Mar. 17, 2023).

- A certified copy of the assignment, without schedules, in the land records of each recording jurisdiction outside of Florida in which real property assets of the estate are located.

- Provides that if a certified copy of the assignment is not acceptable for recording in a particular jurisdiction, the assignee must record a lis pendens or similar notice of action referencing the pending assignment proceedings.
- Provides that in either instance, the recorded original assignment, certified copy of the assignment, or lis pendens or similar notice of action must include the legal description of any real property in the recording jurisdiction.
- Eliminates language providing that an assignee's good faith effort to record, file, or publish in accordance with the bill is effective even if a minor error or omission exists that renders the assignee's effort incomplete or seriously misleading.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Judiciary; and Senator Martin

590-02868-23 2023600c1

A bill to be entitled

An act relating to an assignment for the benefit of creditors; amending s. 727.101, F.S.; revising legislative intent; amending s. 727.104, F.S.; revising requirements for the commencement of proceedings for general assignments; authorizing courts to determine compliance with a specified rule; amending s. 727.105, F.S.; authorizing assignees to rely on certain orders, judgments, decrees, rules, and documents; specifying that the assignee is not personally liable for certain good faith compliance, acts, or omissions; limiting the assets a creditor or other party in interest may pursue in an action against an assignee; providing requirements for a creditor or other party in interest in certain actions against an assignee; providing requirements for claims against an assignee or any agent or professional of the assignee; providing construction; amending s. 727.106, F.S.; excluding certain creditors from being required to turn over assets of the estate upon notice of an assignment proceeding; amending s. 727.110, F.S.; requiring assignees to serve a copy of a notice of rejection by negative notice; authorizing the court to specify an effective date of rejection in its order of rejection; providing an effective date.

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

Section 1. Section 727.101, Florida Statutes, is amended to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-02868-23 2023600c1

read:

727.101 Intent of chapter.—The intent of this chapter is to provide a uniform procedure for the administration and orderly liquidation of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets according to priorities as established under this chapter.

Section 2. Paragraph (a) of subsection (2) of section 727.104, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

727.104 Commencement of proceedings.—

(2) Within 10 days after delivery of the assignment to the assignee, the assignee shall:

(a) Record the original assignment, with or without the schedules, in the official ~~public~~ records of the county in which the assignor had its principal place of business and shall thereafter promptly record a certified copy of the assignment, with or without the schedules, in each county in this state in which real property ~~where~~ assets of the estate are located. The assignee shall promptly record a certified copy of the assignment, without schedules, in the land records of each recording jurisdiction outside of this state in which real property assets of the estate are located. If a certified copy of the assignment is not acceptable for recording in a particular jurisdiction, the assignee shall record a lis pendens or similar notice of action permitted in that jurisdiction referencing the pendency of the proceedings under this chapter. In either instance, the recorded original assignment, certified copy of the assignment, or lis pendens or similar notice of action shall include the legal description of any real property

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

located in the recording jurisdiction.

(3) The court may determine proper compliance with Rule 1.200, Florida Rules of Civil Procedure, in an action filed under this chapter, including, but not limited to, scheduling a case management conference and requiring a periodic status report as warranted by the circumstances of the case.

Section 3. Section 727.105, Florida Statutes, is amended to read:

727.105 Actions ~~Proceedings~~ against assignee.—

(1) An action ~~Proceedings~~ may not be commenced against the assignee except as provided in this chapter, but nothing contained in this chapter affects any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power. Except in the case of a consensual lienholder enforcing its rights in personal property or real property collateral, there shall be no levy, execution, attachment, or the like in respect of any judgment against assets of the estate in the possession, custody, or control of the assignee.

(2) The assignee may:

(a) Rely on any outstanding court orders, judgments, decrees, and rules of law, and is not personally liable for the assignee's own good faith compliance with any such orders, judgments, decrees, or rules of law.

(b) Rely on, and shall be protected in any action by, any resolution, certificate, statement, opinion, report, notice, consent, or other document believed by the assignee to be genuine and to have been signed or presented by the proper parties.

(3) The assignee is not personally liable for:

(a) The assignee's good faith compliance with his or her duties and responsibilities as an assignee.

(b) The assignee's acts or omissions, except upon a finding by the court presiding over an action or proceeding under this chapter that the assignee's acts or omissions:

1. Were outside the scope of his or her duties;

2. Were grossly negligent; or

3. Constitute malfeasance.

(4)(a) Except for matters in paragraph (3)(b), any creditor or party in interest seeking to assert a claim against the assignee must look only to the assignment estate assets and any bond posted by the assignee to satisfy any liability, and the assignee is not personally liable to satisfy any such obligation.

(b) Any creditor or party in interest seeking to assert a claim against the assignee under paragraph (3)(b) must first obtain leave of the court presiding over the assignment action or proceeding based on a finding set forth in paragraph (3)(b).

(5) Any claim against the assignee, or any agent or professional of the assignee who assists the assignee in the administration of the estate, must be brought before the discharge of the assignee under s. 727.116 to the extent the claim has accrued and is predicated upon facts that are known or reasonably should have been known at the time of the discharge, at which point all such claims are deemed released and forever barred.

(6) This section does not alter or limit any other immunity otherwise held by the assignee or any agent or professional of the assignee who assists the assignee in the administration of

the estate.

Section 4. Section 727.106, Florida Statutes, is amended to read:

727.106 Turnover.—Any person or entity~~, other than a creditor,~~ in possession, custody, or control of assets of the estate, other than a creditor holding a lien or a right of setoff or recoupment with respect to the subject assets, shall, upon notice by the assignee of the assignment proceeding, promptly turn such assets over to the assignee or the assignee's duly authorized representative.

Section 5. Paragraphs (a) and (b) of subsection (3) of section 727.110, Florida Statutes, are amended to read:

727.110 Actions by assignee and other parties in interest.—

(3) As to an assignee's rejection of an unexpired lease of nonresidential real property or of personal property, as provided under ss. 727.108(5) and 727.109(6):

(a) The assignee shall file a notice of rejection with the court and serve a copy, by negative notice as defined in s. 727.103, on the owner or lessor of the affected property and, for personal property, on the landlord of the premises on which the property is located. A notice of rejection relating to personal property must identify the affected property, the address at which the affected property is located, the name and telephone number of the person in possession of the affected property, and the deadline for removal of the affected property.

(b) The effective date of the rejection is the date of entry of a court order authorizing such rejection, unless the court orders otherwise.

Section 6. This act shall take effect July 1, 2023.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking & Insurance
Committee

600
Bill Number or Topic

Amendment Barcode (if applicable)

Name Doug Bell

Phone 850 205 9000

Address 119 S. Monroe St
Street

Email doug.bell@mhdfirm.com

TLH
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Business Law Section, FL Bar

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: CS/SB 600
FINAL ACTION: Favorable
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Broxson						
X		Burton						
X		Hutson						
X		Ingoglia						
X		Mayfield						
X		Powell						
X		Thompson						
X		Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
X		Burgess						
12	0	**TOTALS**	FAV	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 940
INTRODUCER:	Banking and Insurance Committee and Senator Calatayud
SUBJECT:	Multiple-employer Welfare Arrangements
DATE:	March 29, 2023 REVISED: 04/14/2023

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

Summary:

CS/SB 940 revises statutory provisions relating to the regulation of association health plans (AHP), which are a type of multiple employer welfare arrangement (MEWA). A MEWA is a legal arrangement that allows business associations or employer groups to jointly offer health insurance and other specified benefits to their members or employees. In Florida, The Office of Insurance Regulation has regulatory oversight of self-insured MEWAs and AHPs.

In 2018, the U.S. Department of Labor DOL revised the Employee Retirement Income Security Act (ERISA) rules by providing another option for establishing and maintaining an association health plan in order to expand access to affordable health coverage for sole proprietors and small employers. This rule loosened the requirements for associations to qualify as ERISA-covered "bona-fide associations," thereby allowing the AHPs they sponsor to qualify as single ERISA plans and be subject to large group market requirements instead of the individual and small group market requirements. Florida codified the 2018 federal regulation defining "bona-fide group." In 2019, the U.S. District Court for the District of Columbia invalidated significant provisions of the federal regulations. The Court concluded that the bona fide association and working provisions of the Final Rule are unreasonable and unlawful interpretations of ERISA, and these provisions were vacated by the Court.

SB 940 revises the definition of "bona-fide group" under Florida law to include many of the provisions of the 2018 federal rule and removes the cross reference to the 2018 federal

regulation. SB 940 provides that a bona-fide group is an employee welfare benefit plan consisting of a group or association of member employers that meets the following requirements:

- The primary purpose of the group or association is to offer and provide health coverage to its member employers and their employees, but the group or association must have at least one substantial business purpose that is unrelated to the offering and providing of health insurance. A substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan.
- Each member employer participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.
- The group or association has a formal organizational structure with a governing body.
- The functions and activities of the group or association are controlled by its member employers. The control must be present both in form and substance.
- The member employers have a principal place of business in the same region that does not exceed the boundaries of a single state or a metropolitan area, even if the metropolitan area includes more than one state.
- Eligibility for the association or group health coverage offerings is specified, such as an employee or former employee of a current employer member of the group or association; or a beneficiary of the current or former employee.
- The group or association is not a health insurance issuer as described in section 733(b)(2) of ERISA, or owned or controlled by a health insurance issuer or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as member employers of the group or association. This language is substantially similar to language found in 29 C.F.R. part 2510.3-5 (8), with the only difference being the removal of the federal citation for the definition of a health insurance issuer.
- The group or association health coverage must comply with the nondiscrimination provisions of s. 627.6699, F.S., as it applies to small group health plans.

The bill is not expected to have an impact on state or local governments.

I. Present Situation:

Regulation of Multiple Employer Welfare Arrangements under ERISA

The U.S. Department of Labor (DOL) is responsible for the administration and enforcement of the provisions of Title I of the Employee Retirement Income Security Act (ERISA).[1] In general, ERISA prescribes minimum participation, vesting and funding standards for private-sector pension benefit plans and reporting and disclosure, claims procedure, bonding and other requirements which apply to both private-sector pension plans and private-sector welfare benefit plans. ERISA also prescribes standards of fiduciary conduct which apply to persons responsible for the administration and management of the assets of employee benefit plans subject to ERISA.

ERISA covers only those plans, funds, or arrangements that constitute an "employee welfare benefit plan," as defined in ERISA Section 3(1), or an "employee pension benefit plan," as defined in ERISA Section 3(2). By definition, MEWAs do not provide pension benefits;

[1] 29 U.S.C. s. 100 et seq.

therefore, only those MEWAs that constitute "employee welfare benefit plans" are subject to ERISA's provisions governing employee benefit plans.

Prior to 1983, if a MEWA was determined to be an ERISA-covered plan, state regulation of the arrangement would have been precluded by ERISA's preemption provisions. On the other hand, if the MEWA was not an ERISA-covered plan, which was generally the case, ERISA's preemption provisions did not apply and states were free to regulate the entity in accordance with applicable state law. In 1983, Congress amended ERISA to give states regulatory authority over self-insured multiple employer welfare arrangements and some regulatory authority over fully insured MEWAs to ensure solvency, require state licensure, and require financial reporting.[2]

Subsequently in 1996, ERISA was amended to give DOL the authority to require full-insured and self-insured MEWAs to register with DOL.[3] MEWAs that are not group health plans (non-plan MEWAs) must register with DOL prior to operating in a state.[4] The purpose of this reporting was to allow the department to determine whether the requirements of part 7 of ERISA were being met.[5] Part 7 of ERISA includes statutory amendments made by HIPAA and other statutes for which MEWAs must annually report compliance.

The Patient Protection and Affordable Care Act[6] created reporting requirements for MEWAs, imposed criminal penalties on MEWA fraud, and authorized the department to take immediate actions against fraudulent MEWAs.

Access to Affordable Health Insurance Coverage through an Association

Prior to August 20, 2018, health insurance coverage offered or provided through an employer trade association, chamber of commerce, or similar organization, to individuals and small employers, was generally regulated under the same federal standards that apply to insurance coverage sold by health insurance issuers[7] directly to these individuals and small employers, unless the coverage sponsored by the group or association constituted a single ERISA covered plan.[8] Generally, unless the arrangement sponsored by the group or association constituted a single ERISA covered plan, the regulatory framework disregarded the group or association in determining whether the coverage obtained by any particular participating individual or employer is individual, small group, or large group market coverage. Instead, the test for determining the type of coverage focuses on whether the coverage is offered to individuals or employers.[9]

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[2] Public L. 97-473.
[3] Pub. L. 104-191.
[4] Title 29 CFR s. 2520.101-2.
[5] 65 FR 7152 (Feb. 11, 2000) interim rule and 68 FR 17494 (Apr. 9, 2003) final rule.
[6] The Patient Protection and Affordable Care Act (Pub. L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. The laws are collectively referred to as PPACA.
[7] A "health insurance issuer" or ''issuer'' is an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a state and that is subject to state law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). Such term does not include a group health plan. 29 CFR 2590.701–2. The terms ''health insurance issuer'' and ''issuer'' are used interchangeably.
[8] FR Vol. 83, No 120 (June 21, 2018) at 28912 and 28913.
[9] *Id.* Known as the "look through" doctrine.

As a result, associations that wanted to form association health plans (AHPs) and existing AHPs currently faced a complex and costly compliance environment, insofar as the various employer members of the association and the association's health insurance coverage arrangement may simultaneously be subject to large group, small group, and individual market regulation, which undermines one of the core purposes and advantages of an association forming and its employer members joining an AHP.

On June 21, 2018, the DOL issued its final rule on the regulation of AHPs, effective August 20, 2018.[10] The final rule maintains the existing regulatory framework but also creates a second option for both new and existing AHPs that may elect to follow the new regulations. The second option contains the following key provisions:

- Allows for AHPs to be based on a common geography area or a common industry for purposes of the commonality of interest test.
- Allows small employers, including sole proprietors with no employees, to join together to form an AHP and be treated as a large employer for the purpose of buying insurance. Previously an employer with no employees was not eligible for group coverage.
- Includes nondiscrimination protections that prohibit associations from conditioning membership based on a health factor (e.g., health status, medical condition including both physical and mental illnesses, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, or disability of an employee, or family member). An AHP may not discriminate in eligibility (e.g., enrollment, effective coverage dates, or waiting periods) benefits or premiums against an individual within a group of similarly situated individuals based on health factors. The rule does not prohibit the use of non-health factors such as gender, age, geography, and industry. The rule prohibits groups or associations from treating the employees of different employer members as distinct groups of similarly situated individuals based on a health factor.
- Eliminates the existing requirement that a group or association acting as an employer must exist for purposes other than providing health benefits. The rule requires that a group or association of employers have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees, even if the primary purpose of the group or association is to offer such coverage to its members.

The rule provides that states will continue to have regulatory oversight of AHPs and share enforcement authority with the federal government. The new rule does not affect previously existing AHPs, which were authorized under prior guidance.[11] Such plans can continue to operate as before, or elect to follow the new requirements if they want to expand within a geographic area, regardless of industry, or to cover the self-employed. New plans can also form and elect to follow either the old guidance or the new rules. New and existing plans may use experience rating by underwriting premiums for individual employer members based on health status. However, the AHPs that want to do so must continue to meet the prior federal regulations,

[10]29 CFR Part 2510, *available at* https://www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-12992.pdf (last viewed Mar. 2, 2023).
[11] FR Vol. 83, No. 120 (June 21, 2018) Preamble.

which are more stringent standards in areas such as commonality of interest; and they could not enroll working owners in an AHP coverage.

In the preamble of the rule, the DOL states that the final rule does nothing to remove the traditional oversight and regulatory authority that states have over AHPs and MEWAs. The final rule does not modify or otherwise limit existing state authority under Section 514 of ERISA. For fully insured AHPs, states can impose solvency standards and other rules that apply to health insurers that sell policies to AHPs. The DOL adds that states clearly have the authority to impose licensing, registration, certification, financial reporting, examination, audit, and any other standards on fully insured AHPs that are necessary to ensure compliance with the state solvency standards. For self-insured AHPs, states can apply insurance laws to the AHP so long as the state law is "not inconsistent" with ERISA.[12]

The rule provides that the large group market's regulatory flexibility is likely to encourage and enable more existing organizations to pursue more potential scale advantages for small business members. These might include some MEWAs that currently do not constitute single large group plans but instead encompass multiple plans, each sponsored separately by a participating employer (non-plan MEWAs).[13] Further, the rule will also encourage the establishment of new organizations to sponsor AHPs, and will enable both existing and new AHPs to extend membership to working owners. Fully-insured and self-insured AHPs established under this final rule generally will be subject to federal benefit mandates that apply to the large group insurance and self-insured ERISA-covered markets, respectively.

Federal Litigation Relating to the Regulations of AHPs

Eleven states and the District of Columbia sued the DOL alleging that its final rule interpreting the definition of "employer" in ERISA is unlawful under the Administrative Procedure Act.[14] The court held that the bona fide association and working owner provisions of the final rule, codified at 29 C.F.R. ss. 2510.3-5(b), (c), and (e) are unreasonable interpretations of ERISA, and were vacated by the court.[15] The court concluded that the Final Rule was intended to end run the requirements of PPACA.[16] The court notes that the final rule includes a severability provision, which provides that if a provision is found entirely invalid then "the provision shall be severable from (the Final Rule) and shall not affect the remainder thereof." In light of this provision, the court remanded the Final Rule to the agency for consideration in the first instance of how the severability provision affects the remaining portions of the Final Rule. The Department of Justice appealed the court's decision to the court of Appeals for the District of Columbia.[17]

[12] Section 514(b)(6)(A)(ii) of ERISA
DOI: 10.1377/hblog20180621.671483.
[13] "Final Rule Rapidly Eases Restrictions on Non-ACA-Compliant Association Health Plans", Health Affairs Blog, (June 21, 2018) https://www.healthaffairs.org/do/10.1377/forefront.20180621.671483/full/ last visited March 2, 2023).
[14] *State of New York, et al., v. United States Department of Labor*, 363 F.Supp.3d 109 (D.C. Cir 2019)..
[15] *Id.* at p. 42.
[16] *Id.*
[17] DOI: 10.1377/hblog20190515.142866.

On April 29, 2019, the DOL provided guidance[18] regarding their enforcement stance for AHPs created under the new rule. The court ruling was issued days before the rule went fully into effect for new self-insured AHPs.[19] Because the rule had already been partially in effect, there were questions about what the court's decision meant for consumers who already enrolled in new AHP coverage.[20]

Under this guidance, the DOL and HHS stated that they would not take enforcement action for violations that occurred before court decision so long as the entity made those decisions in good faith reliance on the validity of the AHP rule.[21] DOL will not take action against existing AHPs for continuing to provide benefits to members who enrolled in good faith reliance on the AHP rule's validity before the district court's order, through the remainder of the applicable contract term. Further, at the end of the plan year, the issuer would only be able to renew the coverage for an employer member of an AHP formed pursuant to the DOL's final rule if the coverage complies with the relevant market requirements for that employer's size (such as, for insurance sold to small employers, the essential health benefits requirements and premium rating rules). The guidance provided that an insurer can satisfy the requirement to continue the coverage in force by continuing coverage for each employer-member of the association that chooses to continue coverage, either through the master policy with the association or through separate contracts with each employer-member on an outside-the-association basis.

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[22] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S., and before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[23]

Regulation of Multiple Employer Welfare Arrangements—General Provisions

Section 627.651, F.S., provides that group health insurance contracts and plans of self-insurance must meet certain group requirements. Further, this section does not apply to any plan which is established or maintained by an individual employer in accordance with ERISA or to a MEWA, as defined in s. 624.437, F.S., except that a MEWA must comply with the following statutory provisions:

- 627.419, F.S., relating to the construction of policies.
- 627.657, F.S., relating to guaranteed availability of individual health insurance coverage.
- 627.6575, F.S., relating to group coverage for newborn children.
- 627.6578, F.S., relating to group coverage for natural-born, adopted, and foster children; and children in insured's custodial care.

[18] U.S. Department of Labor Statement Relating to the U.S. District Court Ruling in State of New York v. United States Department of Labor | U.S. Department of Labor (dol.gov) (Apr. 29, 2019) (last visited Mar. 20, 2023).
[19] DOJ Appeals AHP Decision, CMS Posts Final 1332 Funding For 2019 | Health Affairs (Apr. 30, 2019). DOI: 10.1377/hblog20190430.122083.
[20] DOI: 10.1377/hblog20190515.142866.
[21] Supra at FN 15.
[22] Section 20.121(3)(a), F.S.
[23] Section 641.21(1), F.S.

- 627.6579, F.S., relating to group coverage for child health supervision services.
- 627.6612, F.S., relating to group coverage for surgical procedures and devices incident to mastectomy.
- 627.66121, F.S., relating to coverage length of stay and outpatient postsurgical care for breast cancer.
- 627.66122, F.S., relating to group coverage for breast cancer and routine follow up care.
- 627.6615, F.S., relating to group coverage continuation of coverage for children with disabilities.
- 627.6616, F.S., relating to group coverage for ambulatory surgical center service.
- 627.662(7), F.S., relating to denial of claims.[24]

Florida's Nonprofit Multiple Employer Welfare Arrangement Act

In Florida, MEWAs[25] are regulated pursuant to the Florida's Nonprofit Multiple Employer Welfare Arrangement Act (act).[26] An AHP consisting of multiple employers is referred to as a MEWA.[27] For purposes of this act, a MEWA is an employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health insurance benefits or any other benefits described in s 624.33, F.S., other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries.[28] A person may not operate, maintain, or, after October 1, 1983, establish a MEWA unless such arrangement has a valid certificate of authority issued by the OIR.[29]

The OIR uses the requirements of s. 624.438, F.S., to determine eligibility for MEWAs[30] and specifies the application requirements in Rule 69O-192.008, F.A.C. The OIR reviews MEWA applications for compliance with Florida law and does not review for compliance with federal standards.[31]

In 2019, s. 624.438, F.S., of this act was amended to codify the cross reference to the definition of bona fide group, as adopted in the 2018 federal rule. This change also was made in s. 627.654,

[24] Section 627.645(1), F.S. provides that a claim for payment under a health insurance policy or self-insured program of health benefits for treatment, care, or services in a licensed hospital that is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state may not be denied because such hospital lacks major surgical facilities and is primarily of a rehabilitative nature, if such rehabilitation is specifically for treatment of physical disability.
[25] Section 624.437(3), F.S., provides this section does not apply to a MEWA that offers or provides fully insured benefits by an authorized insurer, to an arrangement which is exempt from state insurance regulation pursuant to ERISA, or to the state group insurance program.
[26] Section 624.436-624.448, F.S. which may be cited as the "Florida Nonprofit Multiple Welfare Arrangement Act."
[27] Section 624.438, F.S.
[28] Section 624.437(1), F.S. Subsection (3) of this section exempts a MEWA that offers or provides benefits which are fully insured by an authorized insurer, to an arrangement which is exempt from state insurance regulation in accordance with, the Employee Retirement Income Security Act of 1974 (ERISA),[28] and the state group health insurance program administered pursuant to s.110.123, F.S.
[29] Section 624.437(2), F.S.
[30] *See* Office of Insurance Regulation, *2023 Legislative Session, SB 940 Analysis* (Feb. 22, 2023).
[31] *Id.* The OIR states that the U.S. Department of Labor advisory opinion and the 2018 Federal District Court opinion do not impact OIR's review of MEWA licensing applications.

F.S, relating to labor unions, association of employers, and small employer alliance groups.[32] Section 624.438, F.S., specifies the general eligibility criteria for a MEWA and requires the employers to be in the same trade, industry, or profession as defined by the appropriate licensing agencies, or a bona fide group as defined in 29 C.F.R. part 2510.3-5.It also requires the MEWA to have a constitution or bylaws specifically stating its purpose and which has been organized for purposes in addition to obtaining or providing insurance.

In Florida, three MEWAs are licensed by Office of Insurance Regulation. They are the Florida Bankers Health Consortium, Inc., Greater Health Trust, and Independent Colleges and Universities Benefit Association, Inc.[33]

Labor Unions, Association, and Small Employer Health Alliance Groups

Section 627.654, F.S., provides that a bona fide group or association or association of employers, as defined in 29 C.F.R. part 2510.3-5, or a group of individuals insured under an association may include a labor union or small employer health alliance groups if certain conditions are met.

Regulation of Small Group Employers

Section 627.6699, F.S., the Employee Health Care Access Act, defines a small group as an employer with at least one and not more 50 employees. The act provides restrictions relating to premium rates. The act allows the use of modified community rating in which the premium for each small employer is determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area. In addition, premium adjustments of an employer's rate for claims experience, health status, or duration of coverage may deviate plus or minus 15 percent from the carrier's approved rate.[34] Subsequently, a small employer carrier may make an adjustment to a small employer's renewal premium, up to 10 percent annually due to claims experience, health status, or duration of coverage of the employees or dependents of the small employer.

The rating and underwriting standards of PPACA[35] require that premiums for individuals and small groups may vary only by:

- Age, up to a maximum ratio of 3 to 1. This means rates for older adults may not be more than three times greater than the rates for younger adults.
- Tobacco, up to a maximum ratio of 1.5 to 1.
- Geographic rating area.
- Whether coverage is for an individual or a family.[36]

[32] Ch. 2019-129, Laws of Fla. Section 627.654, F.S., provides eligibility requirements for associations, labor unions, and small employer health alliance groups that want to be insured under a policy issued to their respective entity.
[33] Office of Insurance Regulation, Company Search (myfloridacfo.gov) (last visited Mar. 10, 2023)
[34] Section 627.6699(6), F.S.
[35] PPACA requires individual and small group plans to provide certain essential benefits and creates rating standards. PPACA preempts any state law that prevents the application of a provision of the PPACA. The PPACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the PPACA, but any state law that does not meet the federal minimum standards will be preempted. Pub. L. No. 111–148, s. 1321(d).
[36] 42 U.S.C. s.18022.

II. Effect of Proposed Changes:

Section 1. Amends s. 624.438, F.S., by deleting the current definition of "bona-fide group," which is defined by a cross reference to the 2018 federal rule, 29 C.F.R. 2510-3-5. The definition of the term, "bona-fide group" is created within the section and it is similar but not identical to the federal definition and requirements. The bill provides that a bona-fide group that is an employee welfare benefit plan includes a group or association which meets the following requirements:

- The primary purpose of the group or association is to offer and provide health coverage to its member employers and their employees, but the group or association has at least one substantial business purpose that is unrelated to the offering and providing of health insurance. A substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan.
- Each member employer participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.
- The group or association must have a formal organizational structure with a governing body.
- The functions and activities of the group or association are controlled by its member employers. The control must be present both in form and substance.
- The member employers must have a principal place of business in the same region that does not exceed the boundaries of a single state or a metropolitan area, even if the metropolitan area includes more than one state.
- Eligibility for health coverage offered by the individuals and employers of the association or group is specified.
- The group or association health coverage must comply with the nondiscrimination provisions of section 627.6699, F.S., as it applies to small group health plans rather than the federal requirements.[37] Section 627.6699, F.S. allows for the use of modified community rating in which the premium for each small employer is determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area. In addition, premium adjustments of plus or minus 15 percent of the approved rate are allowed for claims experience, health status, or duration of coverage may not be charged to individual employees or dependents. The federal rule does not provide rating bands. Section 627.654, F.S., provides that a small employer, as defined in s. 627.6699, F.S., may be insured under a policy issued to a small employer health alliance by a carrier, as defined in s. 627.6699, F.S.
- Specifies that the group or association is not a health insurance issuer as described in section 733(b)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1191b(b)(2), or owned or controlled by a health insurance issuer or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as member employers of the group or association.

Section 2. Amends s. 627.654, F.S., by removing a cross reference to the federal regulation that is also being removed in s. 624.438, F.S. A cross reference to the revised bona-fide group eligibility provisions in s. 624.438, F.S., is added. Currently, s. 627.654, F.S., provides that a bona fide group or association or association of employers, as defined in 29 C.F.R. part 2510.3-

[37] Supra at FN 9.

5, or a group of individuals insured under an association may include a labor union or small employer health alliance groups if certain conditions are met.

Section 3. Provides the act is effective upon becoming law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill will clarify the regulation of self-funded MEWAs in Florida.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

Under federal law, self-employed employers or sole proprietors that have no employees are generally not eligible for group coverage. Instead, they may obtain coverage in the individual

market.[38] It is unclear whether such employers would qualify as an employee of a current group member under Florida law.[39]

VII. Statutes Affected:

This bill substantially amends section 624.438 of the Florida Statutes.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 29, 2023:
The amendment makes technical and conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[38] 45 CFR s. 155.20.
[39] Office of Insurance Regulation, Analysis of SB 940 (Feb. 22, 2023).



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2023	.	
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The Committee on Banking and Insurance (Calatayud) recommended the following:

Senate Amendment (with title amendment)

Delete lines 33 - 95
and insert:
4. A bona fide group is a group or an association of employers which meets all of the following requirements:
a. The primary purpose of the group or association may be to offer and provide health coverage to its employer members and their employees. However, the group or association must also have at least one substantial business purpose unrelated to such

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primary purpose. For purposes of this sub-subparagraph, a substantial business purpose is deemed to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan. A substantial business purpose includes promoting common business interests of its members or the common economic interests in a given trade or employer community and is not required to be a for-profit activity.

b. Each employer member of the group or association which participates in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

c. The group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality.

d. The functions and activities of the group or association are controlled by its employer members, and the group's or association's employer members that participate in the group health plan control the plan. Control must be present both in form and in substance.

e. The employer members have a principal place of business in the same region that does not exceed the boundaries of a single state or metropolitan area, even if the metropolitan area includes more than one state.

f. The group or association does not make health coverage through the group's or association's group health plan available to any person other than:

(I) An employee of a current employer member of the group or association;

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(II) A former employee of a current employer member of the group or association who became eligible for coverage under the group health plan when the former employee was an employee of the employer; or

(III) A beneficiary, such as a spouse or dependent child, of an individual described in sub-sub-subparagraph (I) or sub-sub-subparagraph (II).

g. The group or association and the health coverage offered by the group or association comply with the nondiscrimination provisions of s. 627.6699.

h. The group or association is not a health insurance issuer as defined in s. 733(b)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. s. 1191b(b)(2), or owned or controlled by such a health insurance issuer or by a subsidiary or affiliate of such a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as employer members of the group or association.

The requirements of this paragraph do not apply to an arrangement licensed before April 1, 1995, regardless of the nature of its business. However, an arrangement exempt from the requirements of this paragraph may not expand the nature of its business beyond that set forth in the articles of incorporation of its sponsoring association as of April 1, 1995, except as authorized in this paragraph.

Section 2. Paragraph (a) of subsection (1) of section 627.654, Florida Statutes, is amended to read:

627.654 Labor union, association, and small employer health

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alliance groups.—

(1)(a) A bona fide group as defined in s. 624.438(1)(b)4., an ~~or~~ association of employers, ~~as defined in 29 C.F.R. part 2510.3-5,~~ or a group of individuals may be insured under a policy issued to an association, including a labor union, which association has a constitution and bylaws and which has been organized for purposes in addition to that of obtaining insurance, or to the trustees of a fund established by such an association, which association or trustees shall be deemed the policyholder, insuring at least 15 individual members of the association for the benefit of persons other than the officers of the association, the association, or trustees.

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

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

And the title is amended as follows:

Between lines 5 and 6

insert:

amending s. 627.654, F.S.; conforming a provision to changes made by the act;

By Senator Calatayud

38-00715-23 2023940__

A bill to be entitled

An act relating to multiple-employer welfare arrangements; amending s. 624.438, F.S.; revising eligibility requirements for a bona fide group to qualify as a multiple-employer welfare arrangement; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 624.438, Florida Statutes, is amended to read:

624.438 General eligibility.—

(1) To meet the requirements for issuance of a certificate of authority and to maintain a multiple-employer welfare arrangement, an arrangement:

(b) Must be established by a trade association, industry association, professional association of employers or professionals, or a bona fide group that ~~as defined in 29 C.F.R. part 2510.3-5 which~~ has a constitution or bylaws specifically stating its purpose and which has been organized for purposes in addition to obtaining or providing insurance.

1. A trade association consists of member employers who are in the same trade as recognized by the appropriate licensing agency.

2. An industry association consists of member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the federal Office of Management and Budget, unless restricted by subparagraph 1. or subparagraph 3.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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3. A professional association consists of member employers who are of the same profession as recognized by the appropriate licensing agency.

4. A bona fide group that is an employee welfare benefit plan includes a group or association of employers which meets all of the following requirements:

a. The primary purpose of the group or association is to offer and provide health coverage to its employer members and their employees. However, the group or association must also have at least one substantial business purpose unrelated to such primary purpose. For purposes of this sub-subparagraph, a substantial business purpose is deemed to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan. A substantial business purpose includes promoting common business interests of its members or the common economic interests in a given trade or employer community and is not required to be a for-profit activity.

b. Each employer member of the group or association which participates in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

c. The group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality.

d. The functions and activities of the group or association are controlled by its employer members, and the group’s or association’s employer members that participate in the group health plan control the plan. Control must be present both in

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

form and in substance.

e. The employer members have a principal place of business in the same region that does not exceed the boundaries of a single state or metropolitan area, even if the metropolitan area includes more than one state.

f. The group or association does not make health coverage through the group's or association's group health plan available to any person other than:

(I) An employee of a current employer member of the group or association;

(II) A former employee of a current employer member of the group or association who became eligible for coverage under the group health plan when the former employee was an employee of the employer; or

(III) A beneficiary, such as a spouse or dependent child, of an individual described in sub-sub-subparagraph (I) or sub-sub-subparagraph (II).

g. The group or association and the health coverage offered by the group or association comply with the nondiscrimination provisions of s. 627.6699.

h. The group or association is not a health insurance issuer described in s. 733(b)(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. s. 1191b(b)(2), or owned or controlled by such a health insurance issuer or by a subsidiary or affiliate of such a health insurance issuer, other than to the extent such entities participate in the group or association in their capacity as employer members of the group or association.

The requirements of this paragraph do not apply to an arrangement licensed before April 1, 1995, regardless of the nature of its business. However, an arrangement exempt from the requirements of this paragraph may not expand the nature of its business beyond that set forth in the articles of incorporation of its sponsoring association as of April 1, 1995, except as authorized in this paragraph.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

03/29/23	SB 940
Meeting Date	Bill Number or Topic
Banking and Insurance	
Committee	Amendment Barcode (if applicable)

Name Joseph Salzverg ("Saul's-Verg") Phone 850-577-9090

Address 301 S Bronough Street, Suite 600 Email joseph.salzverg@gray-robinson.com

Street

TLH FL 32301

City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

AvMed

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR Alexis M. Calatayud
38th District

COMMITTEES:
Community Affairs, Chair
Appropriations Committee on Education
Appropriations Committee of Health and Human Services
Education Pre-K 12
Fiscal Policy
Health Policy
Military and Veterans Affairs, Space and Domestic Security
Select Committee on Resiliency

March 3rd, 2023

Honorable Senator Jim Boyd
Chair
Committee on Banking and Insurance

Honorable Chair Boyd,

I respectfully request SB 940 Multiple-employer Welfare Arrangements be placed on the next committee agenda.

The bill revises eligibility requirements for a bona fide group to qualify as a multiple-employer welfare arrangement.

Sincerely,

Alexis M. Calatayud

Senator Alexis M. Calatayud
Florida Senate, District 39

CC: James Knudson, Staff Director
Amaura Canty, Committee Administrative Assistant

REPLY TO:
❒ 11011 SW 101st St, STE 5101, Miami Florida 33176 (305) 596-3002
❒ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: *www.flsenate.gov*

Kathleen Passidomo
President of the Senate

Dennis Baxley
President Pro Tempore

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 940
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 2 Amendment 464912 adopted Calatayud			
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
X		Ingoglia						
X		Mayfield						
X		Powell						
X		Thompson						
X		Torres						
X		Trumbull						
VA		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
11	0	**TOTALS**	FAV	-	RCS	-		
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	CS/SB 1624
INTRODUCER:	Banking and Insurance Committee and Senator Brodeur
SUBJECT:	Commercial Financing Product Brokers and Providers
DATE:	March 29, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1624 creates the "Florida Commercial Financing Disclosure Law." The bill requires a provider that extends an offer of commercial financing of $500,000 or less to give the business certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment. The bill provides that a provider's characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money. The commercial financing disclosures will assist small businesses in comparing the types and cost of financial products available in the marketplace.

Disclosures. The provider is required to disclose in writing the following at or before consummation of a commercial financing product transaction:

- The total amount of funds provided to the business under the terms of the commercial financing product;
- The total amount of funds disbursed to the business under the terms of the commercial financing product, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business;
- The total amount to be paid to the provider pursuant to terms of the commercial financing product agreement;
- The total dollar cost of the commercial financing product under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments;

- The manner, frequency and amount of each payment; and
- A statement of whether there are any costs or discounts associated with prepayment of the commercial financing product including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.

Prohibited Acts. The bill prohibits a broker from engaging in any of the following acts:

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or a preclude a business from paying for, actual services necessary to apply for commercial financial product, such as a credit check or an appraisal of security, if certain conditions are met;
- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker or engage in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence the absence of reliance by the business.
- Make or use any false or deceptive representation in its business dealings.
- Offer the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.

Enforcement. The bill provides that violations of this act are punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations. Any person who violates any provision of this act after receiving written notice of a prior violation from the Attorney General shall be punishable by a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act. The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.

II. Present Situation:

Revenue Based Financing Transaction

In a revenue based financing transaction, a business sells a fixed sum of its future receipts in exchange for an agreed-upon purchase price. In such an agreement:

- The business remits a contractually specified percentage of its revenue. If revenue decreases, then the business has the right to correspondingly decrease its remittances.
- The financing company or provider takes the risk that the business's revenue will be generated slower than expected and the risk that the business will fail or go bankrupt.[1]

Revenue based finance factoring products allow small businesses to access funds for unanticipated events such as a major equipment failure or a seasonal inventory surge. Some finance companies offering these products provide financing between $10,000 and $500,000 to small businesses.[2] The fees associated with a revenue-based financing arrangement may range from 1 percent to 3 percent of monthly revenues of a business.[3]

[1] About Us – RBFC (revenuebasedfinancecoalition.com) (last visited Mar. 20, 2023).
[2] *Id*.
[3] Revenue-Based Financing Versus AR Financing And Factoring (forbes.com) (Sep. 8, 2022) (last visited March 18, 2023).

As an example of a transaction, if a financing company purchases 10 percent of a business's future revenue up to a purchased amount of $10,000, the transaction would be completed whenever the business succeeded in generating $100,000 in revenue, and remitted 10 percent of that revenue to the financing company.[4] This milestone could be achieved in a month, a year, or never.

Accounts Receivable Financing

A company may seek accounts receivable financing (i.e., a bank loan against the value of the accounts receivable) when they exhaust other financing options and use the cash value of accounts receivable as collateral for the loan.[5] Accounts receivable financing agreements can be structured in multiple ways usually with the basis as either an asset sale or a loan.[6] Since there is a risk for the bank, the loan may only be 80 percent to 90 percent of the value of the customer's accounts receivable.[7] In an accounts receivable purchase program, a bank typically purchases a corporation's receivables as soon as the company delivers goods to its customer and issues an invoice.[8] Advantages of such a program can include less expensive financing, favorable off-balance sheet treatment of receivables assets, and reduced credit risk related to the particular obligor.[9] The bank has recourse back to the seller for any dilution items, such as any non-credit reductions to the receivable, which could include discounts, billing errors, commercial disputes, returns, etc.[10]

Merchant Cash Advances[11]

A merchant cash advance, or MCA, is an alternative type of business financing, and is not considered a loan. In this transaction, a company gives a business an upfront sum of cash that the business repays using a percentage of future debit and credit card sales, plus a fee. Repayment periods are based on sales and can range anywhere from three to 18 months; the higher the credit card revenues, the faster the repayment of the advance. As an alternative, MCA companies can also withdraw funds directly from a business bank account. In this case, fixed repayments are made daily or weekly from the account regardless of how much the business earns in sales, and the fixed repayment amount is determined based on an estimate of the monthly revenue of the business.

In 2021, a Florida appellate court[12] held that a MCA purchase and sale agreement is not a loan where the "repayment obligation is not absolute, but rather contingent on or dependent upon the success of the underlying venture." Therefore, it was not subject to Florida's usury statute. The

[4] *Id.*
[5] *Id.*
[6] What Is Accounts Receivable Financing? Definition and Structuring (investopedia.com) (Oct. 29, 2020) (last visited Mar. 25, 2023).
[7] Supra at ft. 4
.[8] TreasuryPulse (fpsc.com) (last visited Mar. 20, 2023).
[9] *Id.*
[10] *Id.*
[11] Is a Merchant Cash Advance Right for Your Business? - NerdWallet
[12] Craton Entertainment, LLC vs. Merchant Capital Group, LLC, No. 3D19-1643 (Jan. 6, 2021).

court also cites authority recognizing that a transaction is not a loan where "a portion of the investment is at speculative risk."

Commercial Financing Disclosure Laws

California[13], Utah[14], New York[15], and Virginia[16] have enacted commercial financing disclosure laws. Virginia's law focuses solely on sales based financing disclosures and registration of providers. Sales based financing are transactions repaid as a percentage of sales or revenue, in which the payment amount is dependent upon the recipient's sales volume or revenue. The Virginia law exempts transactions of more than $500,000 and those originated by depository institutions.[17] Additionally, providers and brokers that enter into no more than five covered transactions in a twelve-month period are not covered.[18] Further, providers of covered sales-based transactions are subject to registration.[19]

Proposed Federal Rule Relating to Commercial Lending Disclosures[20]

In 2021, the CFPB proposed a rule that is designed to help small businesses gain access to credit by increasing transparency in the lending marketplace. The proposed rule would require lenders to disclose information about their lending to small businesses, allowing community organizations, researchers, lenders, and others to better support small business and community development needs. Under the proposal, lenders would be required to report the amount and type of small business credit applied for and extended, demographic information about small business credit applicants, and key elements of the price of the credit offered.

III. Effect of Proposed Changes:

Section 1 creates Part XIII of ch. 559, F.S., "Florida Commercial Financing Disclosure Law."

Definitions (s. 559.9611)

"Accounts receivable purchase transaction," means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles, as those terms are defined in s. 679.1021, F.S., at a discount to the expected value of the account or payment intangibles. For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.

[13] Cal. Fin. Code ss. 22800 to 22805.
[14] Utah Code Ann. Ss. 7-27-101 to 7-27-301. Utah's law requires registration of specified commercial financiers.
[15] N.Y. Fin. Serv. Law ss. 801 *et seq.*; 23 NYCRR ss. 600 *et seq.*
[16] Va. Code Ann. ss. 6.2-2228 to 6.2-2238; 10 Va. Admin. Code ss. 5-240-10 to 5-240-40.
[17] Va. Code Ann. s. 6.2-2229.
[18] *Id.*
[19] Va. Code Ann. s. 6.2-2230.
[20] CFPB Proposes Rule to Shine New Light on Small Businesses' Access to Credit | Consumer Financial Protection Bureau (consumerfinance.gov) (Sep. 1, 2021) (last visited Mar. 20, 2023). Comments must be received on or before January 20, 2023.

Advance fee" means any consideration that is assessed or collected by a broker before the closing of a commercial financing product transaction.

"Broker" means a person who, for compensation or the expectation of compensation, arranges a commercial financing product transaction or an offer between a third party and a business in the state which would, if executed, be binding upon that third party. The term excludes a provider and any individual or entity whose compensation is not based or dependent upon on the terms of the specific commercial financing product transaction obtained or offered.

"Business" means an individual or group of individuals, a sole proprietorship, a corporation, a limited liability company, a trust, an estate, a cooperative, an association, or a limited or general partnership engaged in a business activity.

"Commercial financing transaction" means a commercial loan, accounts receivable purchase transaction, commercial open-end credit plan, or each to the extent the transaction is a business purpose transaction. As used in the definition of commercial financing transaction, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not for personal, family, or household purposes. For purposes of determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner.

"Commercial loan" means a loan to a business, whether secured or unsecured.

"Commercial open-end credit plan" means commercial financing extended by any provider under a plan in which the provider reasonably contemplates repeat transactions and the amount of financing that may be extended to the business during the term of the plan, up to any limit set by the provider, is generally made available to the extent that any outstanding balance is repaid.

"Depository institution" means:

- A bank, a trust company, or an industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United States which is authorized to transact business in this state;
- A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in the state; or
- A savings and loan association, savings bank, or credit union organized under the laws of this or any other state which is authorized to transact business in the state.

"Provider" means a person who consummates more than five commercial financing product transactions to a business located in the state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange for the extension of a commercial financing product by the depository institution to a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing product on behalf of a depository institution may not be

construed to mean that the provider engaged in lending or financing or originated that loan or financing.

Scope of Part XIII (s. 559.9612, F.S.)

This part does not apply to:

- A provider that is a federally insured depository institution or an affiliate or holding company of such institution; or a subsidiary or service corporation that is owned and controlled by a federally insured depository institution.
- A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.
- A commercial financing product transaction that is:
  - Secured by real property;
  - A lease; or
  - A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral.
- A commercial financing product transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least $50,000 or a commercial financing product offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.
- A provider that is licensed as a money transmitter in accordance with a license, certificate, or charter issued by this state or any other state, district, territory, or commonwealth of the United States.
- A provider that consummates no more than five commercial financing product transactions in the state in a 12-month period.
- A commercial financing product transaction of more than $500,000.

Disclosures (s. 559.9613, F.S.)

The provider must provide the following written disclosures at or before consummation of the transaction:

- The total amount of funds provided to the business under the terms of the commercial financing product;
- The total amount of funds disbursed to the business under the terms of the commercial financing product, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business;
- The total amount to be paid to the provider pursuant to terms of the commercial financing product agreement;
- The total dollar cost under the terms of the agreement, calculated by finding the difference between the total amount of funds provided from the total of amount of funds disbursed;
- The manner, frequency and amount of each payment;

- Whether there are any costs or discounts associated with prepayment of the commercial financing product including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.

Prohibited Acts (s. 559.9614, F.S.)

A broker may not:

- Assess, collect, or solicit an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or a preclude a business from paying for, actual services necessary to apply for commercial financial product, such as a credit check or an appraisal of security, if certain conditions are met.
- Make or use any false or misleading representation or omit any material fact in the offer or sale of the services of a broker or engage in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence the absence of reliance by the business.
- Make or use any false or deceptive representation in its business dealings.
- Offer the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.

Enforcement (s. 559.9615, F.S.)

The bill provides that the Attorney General has exclusive authority to enforce part XIII of ch. 559, F.S. Further, the bill provides that violations of this act are punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations. Any person who violates any provision of this act after receiving written notice of a prior violation from the Attorney General shall be punishable by a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act

The section also provides that a violation of any provision of part XIII of ch. 559, F.S., does not affect the enforceability or validity of the underlying commercial financing product transaction. Lastly, this part does not create a private right of action against any person or entity based upon compliance or noncompliance with the provisions of this part.

Section 2 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The required disclosures will assist small businesses in comparing the types and cost of financial products available in the marketplace.

Providers subject to the disclosure requirements would be subject to investigation and fines for noncompliance.

C. Government Sector Impact:

Indeterminate. It is unclear how many providers would be subject to the requirements of the bill and what the potential investigation and enforcement costs the Department of Legal Affairs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections 559.961, 559.9611, 559.9612, 559.9613, 559.9614, 559.9615 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 29, 2023:
The CS specifies that disclosures must be in writing and provides technical changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

180480

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2023	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.961, 559.9611, 559.9612, 559.9613, 559.9614, and 559.9615, Florida Statutes, is created to read:

PART XIII

FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

559.961 Short title.—This part may be cited as the "Florida



Commercial Financing Disclosure Law."

559.9611 Definitions.—As used in this part, the term:

(1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles as those terms are defined in s. 679.1021 at a discount to the expected value of the account or payment intangibles. For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.

(2) "Advance fee" means any consideration that is assessed or collected by a broker before the closing of a commercial financing transaction.

(3) "Broker" means a person who, for compensation or the expectation of compensation, arranges a commercial financing transaction or an offer between a third party and a business in this state which would, if executed, be binding upon that third party. The term excludes a provider and any individual or entity whose compensation is not based or dependent upon the terms of the specific commercial financing transaction obtained or offered.

(4) "Business" means an individual or a group of individuals, a sole proprietorship, a corporation, a limited liability company, a trust, an estate, a cooperative, an association, or a limited or general partnership engaged in a business activity.

(5) "Commercial financing transaction" means a commercial



loan, an accounts receivable purchase transaction, or a commercial open-end credit plan to the extent the transaction is also a business purpose transaction. As used in this subsection, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not to be used for personal, family, or household purposes. For purposes of determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner.

(6) "Commercial loan" means a loan to a business, whether secured or unsecured.

(7) "Commercial open-end credit plan" means commercial financing extended by any provider under a plan in which:

(a) The provider reasonably contemplates repeat transactions.

(b) The amount of financing that may be extended to the business during the term of the plan, up to any limit set by the provider, is generally made available to the extent that any outstanding balance is repaid.

(8) "Depository institution" means:

(a) A bank, a trust company, or an industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United States which is authorized to transact business in this state;



(b) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state; or

(c) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state which is authorized to transact business in this state.

(9) "Provider" means a person who consummates more than five commercial financing transactions with a business located in this state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing transaction on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.

559.9612 Scope of this part.—This part applies to any commercial financing transaction consummated on or after January 1, 2024. This part does not apply to:

(1) A provider that is:

(a) A federally insured depository institution or an affiliate or holding company of such institution; or

(b) A subsidiary or service corporation that is owned and controlled by a federally insured depository institution.

(2) A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.

(3) A commercial financing transaction that is:

(a) Secured by real property;



(b) A lease; or

(c) A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used.

(4) A commercial financing transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least $50,000 or a commercial financing transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.

(5) A provider that is licensed as a money transmitter in accordance with a license, certificate, or charter issued by this state or any other state, district, territory, or commonwealth of the United States.

(6) A provider that consummates no more than five commercial financing transactions in this state in a 12-month period.

(7) A commercial financing transaction of more than $500,000.

559.9613 Disclosures.—

(1) A provider that consummates a commercial financing transaction shall provide a written disclosure of the terms of the commercial financing transaction as required by this part. The disclosures must be provided at or before consummation of



the transaction. Only one disclosure must be provided for each commercial financing transaction, and a disclosure is not required as result of a modification, forbearance, or change to a consummated commercial financing transaction.

(2) A provider shall provide a written disclosure of the following information in connection with each commercial financing transaction:

(a) The total amount of funds provided to the business under the terms of the agreement.

(b) The total amount of funds disbursed to the business if less than the amount specified in paragraph (a) as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business.

(c) The total amount to be paid to the provider under the terms of the agreement.

(d) The total dollar cost under the terms of the agreement, calculated by finding the difference between the amount specified in paragraph (a) and the amount specified in paragraph (c).

(e)1. The manner, frequency, and amount of each payment; or

2. If the amount of the payments may vary, the provider must instead disclose the manner and frequency of the payments, the estimated amount of the initial payment, a description of the methodology for calculating any variable payment, and the circumstances under which payments may vary.

(f) Whether there are any costs or discounts associated with prepayment, including a reference to the provision in the agreement which creates the contractual rights of the parties



related to prepayment.

559.9614 Prohibited acts.—A broker may not do any of the following:

(1) Assess, collect, or solicit an advance fee from a business to provide services as a broker. However, this subsection does not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for a commercial financing transaction, including, but not limited to, a credit check or an appraisal of security, if such payment is made by check or money order payable to a party independent of the broker.

(2) Make or use any false or misleading representation or omit any material fact in the offer or sale of the services of a broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a broker, notwithstanding the absence of reliance by the business.

(3) Make or use any false or deceptive representation in its business dealings.

(4) Offer the services of a broker in any advertisement without disclosing the actual address and telephone number of the business of the broker and the address and telephone number of any forwarding service the broker may use, if any.

559.9615 Enforcement.—

(1) The Attorney General has exclusive authority to enforce this part. The Attorney General may:

(a) Receive and act on complaints.

(b) Take action designed to obtain voluntary compliance with this part.

180480

(c) Commence administrative or judicial proceedings to enforce compliance with this part.

(2)(a) A violation of this part is punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this part.

(b) A violation of this part after receipt of a written notice of a prior violation from the Attorney General is punishable by a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this part.

(c) A violation of this part does not affect the enforceability or validity of the underlying commercial financing transaction.

(3) This part does not create a private right of action against any person or entity based upon compliance or noncompliance with this part.

Section 2. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to commercial financing transaction brokers and providers; creating part XIII of ch. 559, F.S., entitled "Florida Commercial Financing Disclosure Law"; creating s. 559.961, F.S.; providing


180480

a short title; creating s. 559.9611, F.S.; defining terms; creating s. 559.9612, F.S.; providing applicability; creating s. 559.9613, F.S.; requiring providers that consummate commercial financing transactions to provide specified written disclosures; creating s. 559.9614, F.S.; prohibiting brokers from taking specified actions; creating s. 559.9615, F.S.; providing exclusive authority of the Attorney General to enforce specified provisions; providing civil penalties; providing construction; providing an effective date.

By Senator Brodeur

10-01051C-23 20231624__

A bill to be entitled

An act relating to commercial financing product brokers and providers; creating part XIII of ch. 559, F.S., entitled "Florida Commercial Financing Disclosure Law"; creating s. 559.961, F.S.; providing a short title; creating s. 559.9611, F.S.; providing definitions; creating s. 559.9612, F.S.; providing scope; creating s. 559.9613, F.S.; providing requirements for disclosure of certain information by commercial financing product providers under certain circumstances; creating s. 559.9614, F.S.; providing prohibited acts by commercial financing product providers; creating s. 559.9615, F.S.; providing exclusive authority of the Attorney General to enforce specified provisions; providing fines; providing construction; providing an effective date.

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

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.961, 559.9611, 559.9612, 559.9613, 559.9614, and 559.9615, is created to read:

PART XIII

FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

559.961 Short title.—This part may be cited as the "Florida Commercial Financing Disclosure Law."

559.9611 Definitions.—As used in this part, the term:

(1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-01051C-23 20231624__

person all or a portion of the business' accounts, as defined in s. 679.1021, or payment intangibles, as defined in s. 679.1021, at a discount to the expected value of the account or payment intangibles. For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.

(2) "Advance fee" means any consideration that is assessed or collected by a broker before the closing of a commercial financing product transaction.

(3) "Broker" means a person who, for compensation or the expectation of compensation, arranges a commercial financing product transaction or an offer between a third party and a business in the state which would, if executed, be binding upon that third party. The term excludes a provider and any individual or entity whose compensation is not based or dependent upon on the terms of the specific commercial financing product transaction obtained or offered.

(4) "Business" means an individual or group of individuals, a sole proprietorship, a corporation, a limited liability company, a trust, an estate, a cooperative, an association, or a limited or general partnership engaged in a business activity.

(5) "Commercial financing product" means a commercial loan, accounts receivable purchase transaction, commercial open-end credit plan, or each to the extent the transaction is a business purpose transaction. As used in this subsection, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

to carry on a business and not for personal, family, or household purposes. For purposes of determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner.

(6) "Commercial loan" means a loan to a business, whether secured or unsecured.

(7) "Commercial open-end credit plan" means commercial financing extended by any provider under a plan in which:

(a) The provider reasonably contemplates repeat transactions.

(b) The amount of financing that may be extended to the business during the term of the plan, up to any limit set by the provider, is generally made available to the extent that any outstanding balance is repaid.

(8) "Depository institution" means:

(a) A bank, a trust company, or an industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United States which is authorized to transact business in this state;

(b) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in the state; or

(c) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state which

is authorized to transact business in the state.

(9) "Provider" means a person who consummates more than five commercial financing product transactions to a business located in the state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange for the extension of a commercial financing product by the depository institution to a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing product on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.

559.9612 Scope of this part.—This part applies to any commercial financing product transaction consummated on or after January 1, 2024. This part does not apply to:

(1) A provider that is:

(a) A federally insured depository institution or an affiliate or holding company of such institution; or

(b) A subsidiary or service corporation that is owned and controlled by a federally insured depository institution.

(2) A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.

(3) A commercial financing product transaction that is:

(a) Secured by real property;

(b) A lease; or

(c) A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral

if the value is in fact so used.

(4) A commercial financing product transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least $50,000 or a commercial financing product offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.

(5) A provider that is licensed as a money transmitter in accordance with a license, certificate, or charter issued by this state or any other state, district, territory, or commonwealth of the United States.

(6) A provider that consummates no more than five commercial financing product transactions in the state in a 12-month period.

(7) A commercial financing product transaction of more than $500,000.

559.9613 Disclosures.—

(1) A provider that consummates a commercial financing product transaction shall disclose the terms of the commercial financing product transaction as required by this part. The disclosures must be provided at or before consummation of the transaction. Only one disclosure must be provided for each commercial financing product transaction, and a disclosure is not required as result of a modification, forbearance, or change to a consummated commercial financing product transaction.

(2) A provider must disclose the following information in connection with each commercial financing product transaction:

(a) The total amount of funds provided to the business under the terms of the agreement.

(b) The total amount of funds disbursed to the business if less than the amount specified in paragraph (a) as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business.

(c) The total amount to be paid to the provider under the terms of the agreement.

(d) The total dollar cost under the terms of the agreement, calculated by finding the difference between the amount specified in paragraph (a) and the amount specified in paragraph (c).

(e) The manner, frequency, and amount of each payment. If the payments may vary, the provider shall instead disclose the manner, frequency, and the estimated amount of the initial payment and a description of the methodology for calculating any variable payment and the circumstances when payments may vary.

(f) A statement of whether there are any costs or discounts associated with prepayment, including a reference to the paragraph in the agreement which creates the contractual rights of the parties related to prepayment.

559.9614 Prohibited acts.—A broker may not:

(1) Assess, collect, or solicit an advance fee from a business to provide services as a broker. However, this subsection does not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual

services necessary to apply for a commercial financing product, including, but not limited to, a credit check or an appraisal of security, if such payment is made by check or money order payable to a party independent of the broker;

(2) Make or use any false or misleading representation or omit any material fact in the offer or sale of the services of a broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a broker, notwithstanding the absence of reliance by the business;

(3) Make or use any false or deceptive representation in its business dealings; or

(4) Offer the services of a broker by making, publishing, disseminating, circulating, or placing before the public within the state an advertisement in a newspaper or other publication or an advertisement in the form of a book, notice, handbill, poster, sign, billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an advertisement circulated by radio, loudspeaker, telephone, television, telegraph, or in any other way, in which the offer or advertisement does not disclose the name, business address, and telephone number of the broker. For purposes of this subsection, the broker shall disclose the actual address and telephone number of the business of the broker in addition to the address and telephone number of any forwarding service that the broker may use.

559.9615 Enforcement.—

(1) The Attorney General has exclusive authority to enforce this part. The Attorney General may:

(a) Receive and act on complaints.

(b) Take action designed to obtain voluntary compliance with this part.

(c) Commence administrative or judicial proceedings to enforce compliance with this part.

(2)(a) A violation of any provision of this part is punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this part.

(b) A violation of any provision of this part after receipt of a written notice of a prior violation from the Attorney General is punishable by a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this part.

(c) A violation of any provision of this part does not affect the enforceability or validity of the underlying commercial financing product transaction.

(3) Nothing in this part creates or is intended to create a private right of action against any person or entity based upon compliance or noncompliance with the provisions of this part.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking + Insurance
Committee

SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name Abby Vail

Phone 850-577-0444

Address 201 E. Park Ave 5th floor
Street

Email abby@ballardpartners.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Revenue Based Finance Coalition

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Banking and Insurance
ITEM: SB 1624
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 29, 2023
TIME: 8:30—10:30 a.m.
PLACE: 412 Knott Building

FINAL VOTE			3/29/2023 1 Motion to vote "YEA" after Roll Call DiCeglie		3/29/2023 2 Amendment 180480 adopted Brodeur			
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Broxson						
X		Burgess						
X		Burton						
X		Hutson						
X		Ingoglia						
X		Mayfield						
X		Powell						
X		Thompson						
X		Torres						
X		Trumbull						
X		DiCeglie, VICE CHAIR						
X		Boyd, CHAIR						
12	0	**TOTALS**	FAV	-	RCS	-		
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

FLORIDA OFFICE OF
Insurance
Regulation

Residential Property Claims and Litigation Data Call – Closed Claims for Calendar Year 2022 as of 3/28/2023

Following the passage of SB 76, OIR issued an Informational Memorandum OIR-22-01M, to all personal and commercial residential property insurers authorized to provide guidance regarding new reporting requirements. As part of the rule making process, OIR published the data call template and hosted multiple workshops to solicit comments on the reporting template.

Filing Data

In January 2023, OIR issued the data call notice to each insurer or insurer group required to submit data. Companies were encouraged to begin submitting data as soon as possible, ahead of the March 1, 2023, deadline. On February 6 and 28, 2023, OIR issued reminder data call notices.

- 621 companies were required to file.
- 442 insurers submitted "no data" filings.
- 115 insurers did not file by the March 1, 2023, deadline.
- OIR is pursuing $38,000 in penalty fines to non-filers.
- As of March 28, 2023, all companies have filed.

OIR received data for a total of 678,986 unique[1] claims closed during calendar year 2022[2]. This data is preliminary and OIR continues to validate the numbers; however, an overview of the claims data reported is outlined below[3].

Reported Claims By County (as of March 28, 2023)	
Lee County	118,378
Charlotte County	50,642
Orange County	44,861
Sarasota County	44,381
Broward County	40,477

Reported Claims By Peril (as of March 28, 2023)	
Accidental Discharge or Overflow of Water or Steam Peril	77,862
Falling Objects Peril	3,322
Fire or Lightning Peril	13,854
Hurricane	283,542
Sinkhole	291
Water - Other than Accidental Discharge or Overflow of Water or Steam Peril	79,350
Windstorm or Hail Peril - Other than Hurricane	148,118
All Other Perils	73,926

- Average Indemnity for claims: $15,330.74
- Average Loss Adjustment Expense for claims: $2,156.25

OIR continues to review and analyze this data and will work with companies to ensure they fully comply with Florida law. OIR is committed to the continued review and collection of this data and will utilize it over time to understand and improve Florida's insurance markets.

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[1] Unique claim counts do not include duplicate claim IDs.
[2] Claims closed in 2022 may not have been originally reported in the same calendar year.
[3] Individual claims data is trade secret and confidential pursuant to sections 624.4212 and 624.4213, Florida Statutes.
Note: Many Hurricane Ian claims will be reported in the 2023 closed claims report.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Senate Bill
Committee

Insurer Accountability
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michael Yaworsky

Phone (850) 413-5011

Address 200 E Gaines St
Street

Email insurancecommissioner@floir.com

Tallahassee FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☒ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: OIR

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking & Insurance
Committee

Insurer Accountability
Bill Number or Topic

Amendment Barcode (if applicable)

Name Greg Thomas

Phone 850 413 5939

Address PL 11 The Capitol
Street

Email greg.thomas@myfloridacfo.com

Tallahassee FL 32399
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information **OR** Waive Speaking: ☐ In Support ☐ Against

Director, Division of Consumer Services

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

State Employee

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/29/23
Meeting Date

Banking & Insurance
Committee

Insurer Accountability
Bill Number or Topic

Amendment Barcode (if applicable)

Name Simon Blank

Phone 850 413 5939

Address PL 11 The Capitol
Street

Email simon.blank@myfloridacfo.com

Tallahassee FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☒ Information **OR** Waive Speaking: ☐ In Support ☐ Against

Director, Division of Investigative and Forensic Services

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

State Employee

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Committee on Banking and Insurance **Judge:**

Started: 3/29/2023 8:33:58 AM
Ends: 3/29/2023 10:47:00 AM Length: 02:13:03

8:34:01 AM Chair calls meeting to order
8:34:07 AM tab 6 SB 600 by Senator Martin
8:34:29 AM Senator Martin to explain the bill
8:34:39 AM questions?
8:35:07 AM Senator Martin waives close
8:35:32 AM roll call Vote on CS/SB 600
8:35:53 AM tab 8 SB 1624 by Senator Brodeur
8:36:52 AM late filed amendment 180480
8:37:08 AM Senator Brodeur to explain the amendment
8:37:18 AM amendment is favorable
8:37:42 AM appearance cards waiving in support
8:37:57 AM Senator Broduer waives close
8:38:09 AM roll call vote on SB 1624
8:38:20 AM information recess
8:39:05 AM Recording Paused
8:40:15 AM Recording Resumed
8:40:28 AM meeting called back to order
8:41:28 AM tab 1 by Senator Rodriguez SB 128
8:41:44 AM Senator Rodriguez to explain the bill
8:41:56 AM amendment 789210
8:42:28 AM Senator Rodriguez to explain the amendment
8:42:43 AM questions
8:43:28 AM debate
8:43:30 AM amendment is favorable
8:43:43 AM appearance cards waives in support
8:43:55 AM debate
8:43:59 AM Senator Rodriuez waives close
8:44:10 AM roll call vote on SB128; Favorable
8:44:24 AM tab 7 by Senator Calatayud to be explained by Senator Rodriguez
8:45:04 AM Senator Rodriguez explains SB 940 on behalf of Senator Calatayud
8:45:40 AM amendment 464192
8:45:50 AM questions
8:46:05 AM no appearance cards
8:46:12 AM waives close on the amendment
8:46:21 AM amendment is favorable
8:46:28 AM appearance cards waives in support
8:46:42 AM Senator Rodriguez waives close
8:46:56 AM roll call vote on SB 940
8:47:06 AM tab 3 SB 302 by Senator Grall
8:47:35 AM Senator Grall to explain the bill
8:47:43 AM strike all 659616
8:47:56 AM Senator Grall to explain the strike all
8:50:24 AM question on strike all
8:51:24 AM Senator Powell for a question on the strike all
8:51:33 AM Senator Powell for a line of questions to Senator Grall
9:03:50 AM Senator Thompson for a question
9:04:50 AM Senator Grall for a reply
9:05:30 AM Senator Thompson for a line of questions
9:06:29 AM Senator Grall in response
9:09:25 AM Senator Torres for a question
9:10:24 AM Senator Grall in response
9:10:49 AM Senator Torres for a line of questions

9:11:47 AM Senator Grall in response
9:12:38 AM appearance cards
9:14:13 AM Dwight Mattlingly to speak against the amendment and bill
9:16:28 AM debate
9:17:27 AM Senator Grall waives close
9:17:36 AM amendment is favorable
9:17:42 AM questions on bill as amended
9:17:50 AM Senator Powell for a question on bill as amended
9:19:09 AM Senator Grall for a response
9:20:08 AM Senator Powell for a follow up
9:20:52 AM Senator Torres for a question
9:21:52 AM Senator Grall in response
9:22:02 AM Senator Torres for a follow up
9:22:34 AM Senator Grall in response
9:22:40 AM appearance cards
9:22:45 AM Dr. Rev. Russell Meyer to speak
9:25:29 AM Alexis Underwood to speak
9:26:28 AM Dr. Rich Templin, Florida AFLCIO, to speak
9:28:55 AM Anthony DiMarco, Fla Bankers Assoc, to speak
9:31:03 AM Mary Elizabeth Estrada to speak
9:33:32 AM Briley Nestor to speak
9:34:48 AM Alexandra Mendez to speak
9:35:47 AM appearance cards waiving against
9:37:45 AM apperance cards waiving in support
9:38:45 AM debate
9:38:48 AM Senator Powell to debate bill
9:40:30 AM Senator Thompson in debate
9:42:16 AM Senator Torres in debate of the bill
9:43:17 AM Senator Grall to close on the bill
9:45:03 AM roll call vote on CS/SB 302
9:46:03 AM tab 4 SB 312 by Senator Collins
9:46:30 AM late filed delete all 705828
9:46:51 AM Senator Collins to explain the delete all amendment
9:47:02 AM appearance cards waiving in support
9:47:39 AM debate
9:47:43 AM waives close
9:47:47 AM amendment adopted
9:47:57 AM appearance cards waiving in support
9:48:10 AM debate
9:48:19 AM Senator Collins waives close
9:48:27 AM roll call vote on bill as amended
9:48:40 AM tab 2 SB 180 by Senator Gruters
9:49:10 AM Senator Gruters to explain strike all 491330
9:49:38 AM questions
9:50:38 AM debate on amendment
9:50:47 AM amendment is adopted
9:50:53 AM debate on bill as amended
9:51:17 AM Senator Gruters waives close
9:51:24 AM roll call vote on bill
9:51:32 AM tab 5 SB 580 by Senator Gruters
9:51:54 AM Senator Gruters to explain bill
9:52:16 AM barcode amendment 747392
9:53:15 AM appearance cards waives in support
9:53:35 AM amendment is adopted
9:53:46 AM back on bill as amended
9:53:52 AM Senator Powell for aline of questions
9:54:03 AM Senator Gruters in response
9:54:19 AM Senator Torres for a line of question
9:55:20 AM Senator Gruters to reply
9:57:05 AM appearance cards
9:58:05 AM Senator Burton for a question
9:58:15 AM Senator Gruters to reply

9:58:36 AM appearance cards
9:59:51 AM Austin Clancy VP Main One
10:01:30 AM Senator Ingoglia for a question to to speaker
10:02:30 AM Mr. Clancy in reply
10:03:07 AM Scott Jenkins Florida financial Services Assoc.
10:05:28 AM Karen Woodall Fl Center for Fiscal and Economic Policy
10:07:15 AM appearance cards waiving for/against
10:08:14 AM debate
10:09:10 AM Senator Torres to debate
10:09:22 AM Senator Gruters to close on the bill
10:10:09 AM roll call vote CS/SB 580
10:10:30 AM Chair Boyd makes comments about insurance accountability discussion
10:11:30 AM Michael Yaworsky, Commissioner, Office of Insurance Regulation, to update on insurance claims data and transparency
10:15:39 AM any questions
10:16:39 AM Chair Boyd welcomes the Commissioner to his new position
10:17:14 AM Senator Torres for a question
10:17:24 AM Commissioner Yaworsky in response
10:17:40 AM Senator Trumbull for a question
10:19:37 AM Senator Trumbull for a line of questions
10:20:37 AM Commissioner Yaworsky to respond
10:20:56 AM Chair Boyd makes motion to extend until 11:00 am
10:21:47 AM Senator Hutson for a question
10:22:00 AM Commissioner to respond
10:23:40 AM Senator Hutson for a line of quesitons
10:24:39 AM Commissioner in response
10:24:49 AM Chair boyd to recognize some people in the audience
10:26:37 AM Commisioner to speak on report submitted to the Legislature
10:28:24 AM Chair Boyd thanks the Commissioner for being here today
10:29:23 AM Greg Thomas, CFO, Dept. Financial Services
10:30:40 AM Greg Thomas, Director Division of Consumer Servicesm DFS
10:33:32 AM Chair Boyd asks CFO what the Agency needs from the Legislature
10:34:31 AM Greg Thomas mentions extra funding needed
10:35:10 AM Chair Boyd for a question
10:35:18 AM Greg Thomas in reply
10:37:07 AM Senator Mayfield for a line of questions
10:38:41 AM Greg Thomas to respond
10:39:40 AM Senator Torres for a line of questions
10:40:06 AM Greg Thomas to respond
10:40:57 AM Simon Blank, Director of Investigative and Forensic Services, DFS
10:41:57 AM Chair Boyd on comments to Mr. Blank
10:42:36 AM Chair boyd on comments to Mr. Blank
10:43:04 AM Mr. Blank in response
10:44:30 AM Chair Boyd thanks Mr. Blank
10:45:29 AM Chair Boyd closing comments
10:45:56 AM Motion for vote after
10:46:14 AM Senator DeCeglie moves we rise