

By Senator Clemens

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1 A bill to be entitled
2 An act relating to small business investment; amending
3 s. 517.021, F.S.; revising definitions; amending s.
4 517.07, F.S.; conforming a provision to changes made
5 by the act; amending s. 517.12, F.S.; conforming a
6 cross-reference; exempting certain funding portals
7 from registration requirements relating to the offer
8 or sale of certain securities; creating s. 517.371,
9 F.S.; providing a short title; exempting certain
10 offers and sales of securities and certain individuals
11 from specified registration requirements; prohibiting
12 the use of specified exemptions from registration
13 requirements in conjunction with another exemption
14 from registration requirements; providing exceptions;
15 limiting a funding portal's liability for certain
16 transactions; amending s. 626.9911, F.S.; conforming a
17 cross-reference; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Paragraph (b) of subsection (6) and subsection
22 (9) of section 517.021, Florida Statutes, are amended, present
23 subsections (11) through (23) of that section are renumbered as
24 subsections (12) through (24), respectively, and a new
25 subsection (11) is added to that section, to read:

26 517.021 Definitions.—When used in this chapter, unless the
27 context otherwise indicates, the following terms have the
28 following respective meanings:

29 (6)

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

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

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

3. A ~~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. A ~~Any~~ wholesaler selling exclusively to dealers;

5. A ~~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), a ~~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; or

7. A funding portal exempt from registration under s. 517.12(21).

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (12)(b)1.-

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59 ~~8. (13)(b)1.-8.~~

60 (11) "Funding portal" means a corporation, a trust, a
61 partnership, an association, or any other legal entity that is
62 registered with the Secretary of State to do business in this
63 state and acting as an intermediary in a transaction involving
64 the offer or sale of securities for the account of others and
65 that does not:

66 (a) Offer investment advice or recommendations. A funding
67 portal's refusal to post or rejection of an offering that is
68 deemed not credible or that may present a potential for fraud
69 may not be construed as an offer of investment advice or
70 recommendation;

71 (b) Solicit purchases, sales, or offers to buy securities
72 offered or displayed on its website or portal;

73 (c) Compensate employees, agents, or other persons for the
74 solicitation of purchases, sales, or offers to buy the
75 securities offered or displayed on its website or portal; or

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

78 Section 2. Subsection (1) of section 517.07, Florida
79 Statutes, is amended to read:

80 517.07 Registration of securities.—

81 (1) It is unlawful and a violation of this chapter for any
82 person to sell or offer to sell a security within this state
83 unless the security is exempt under s. 517.051, is sold in a
84 transaction exempt under s. 517.061 or s. 517.371, is a federal
85 covered security, or is registered pursuant to this chapter.

86 Section 3. Subsection (20) of section 517.12, Florida
87 Statutes, is amended, and subsection (21) is added to that

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88 section, to read:

89 517.12 Registration of dealers, associated persons, and
90 investment advisers.—

91 (20) The registration requirements of this section do not
92 apply to a ~~any~~ general lines insurance agent or life insurance
93 agent licensed under chapter 626, for the sale of a security as
94 defined in s. 517.021(22) (g) ~~s. 517.021(21) (g)~~, if the
95 individual is directly authorized by the issuer to offer or sell
96 the security on behalf of the issuer and the issuer is a
97 federally chartered savings bank subject to regulation by the
98 Federal Deposit Insurance Corporation. Actions under this
99 subsection shall constitute activity under the insurance agent's
100 license for purposes of ss. 626.611 and 626.621.

101 (21) The registration requirements of this section do not
102 apply to a funding portal that:

103 (a) Complies with any notice or filing requirements for
104 exemption from registration as a broker-dealer established by
105 rule or order of the commission or office under this chapter or
106 registration requirements for a funding portal established by
107 the United States Securities Exchange Commission and the
108 Financial Industry Regulatory Authority.

109 (b) Facilitates the offer and sale of securities.

110 (c) Provides basic information on its website regarding the
111 high risk of investment in and limitation on the resale of
112 exempt securities and the potential for loss of an entire
113 investment.

114 (d) Maintains records of the offers and sales of securities
115 made through its website and provides access to such records
116 upon request by the commission or office.

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117 (e) Is not subject to a disqualification established by the
118 commission or office or a disqualification described in United
119 States Securities and Exchange Commission Rule 262, 17 C.F.R. s.
120 230.262, under the Securities Act of 1933.

121 Section 4. Section 517.371, Florida Statutes, is created to
122 read:

123 517.371 Crowdfinance exemption.-

124 (1) This section may be cited as the "Crowdfinance Act."

125 (2) As used in this section, the term "individual" means a
126 natural person residing in this state or a corporation, trust,
127 partnership, association, or other legal entity, including a
128 funding portal, that is registered with the Secretary of State
129 to do business in this state and that has its principal place of
130 business in this state, and that does not:

131 (a) Offer investment advice or recommendations;

132 (b) Solicit purchases, sales, or offers to purchase
133 securities exempted by this section;

134 (c) Compensate employees, agents, or other persons for the
135 solicitation of purchases, sales, or offers to purchase the
136 securities exempted by this section; or

137 (d) Take custody of investor funds or securities.

138 (3) The offer or sale of a security by an issuer is exempt
139 from the registration requirements of s. 517.07, and each
140 individual who represents an issuer in an offer or sale is
141 exempt from the registration requirements of s. 517.12 if the
142 offer or sale is conducted in accordance with all of the
143 following requirements:

144 (a) The issuer of the security is a for-profit business
145 entity formed under the laws of this state and registered with

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146 the Secretary of State.

147 (b) The transaction meets the requirements of the federal
148 exemption for intrastate offerings under s. 3(a)(11) of the
149 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United
150 States Securities and Exchange Commission Rule 147, 17 C.F.R. s.
151 230.147, under the Securities Act of 1933.

152 (c) The sum of all cash and other consideration received
153 from all sales of the security in reliance upon this exemption
154 does not exceed \$1 million, less the aggregate amount received
155 for all sales of securities by the issuer within the 12 months
156 before the first offer or sale made in reliance upon this
157 exemption.

158 (d) The issuer obtains from each purchaser evidence showing
159 that the purchaser is a resident of this state.

160 (e) Unless the purchaser is an accredited investor as
161 defined by Rule 501 of Regulation D of the Securities Act of
162 1933, the aggregate amount sold by an issuer to an investor in
163 transactions exempt from registration requirements under this
164 subsection during a 12-month period does not exceed:

165 1. If the investor's annual income or net worth is less
166 than \$100,000, the greater of \$2,000, 5 percent of the annual
167 income of the investor, or 5 percent of the net worth of the
168 investor; or

169 2. If the investor's annual income or net worth is \$100,000
170 or more, the greater of \$100,000, 10 percent of the annual
171 income of the investor, or 10 percent of the net worth of the
172 investor.

173 (f) All funds received from investors are deposited into a
174 bank or depository institution authorized to do business in this

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175 state, and all such funds are used in accordance with
176 representations made to investors.

177 (g) Before the use of any general solicitation or the 25th
178 sale of the security, whichever occurs first, the issuer files a
179 notice with the commission in writing or in electronic form
180 through the office's Regulatory Enforcement and Licensing System
181 that:

182 1. Indicates that the issuer is conducting an offering in
183 reliance upon this exemption.

184 2. Contains the names and addresses of the issuer, all
185 persons who will be involved in the offer or sale of securities
186 on behalf of the issuer, and the bank or other depository
187 institution in which investor funds will be deposited.

188 3. Includes documentation verifying that the issuer is
189 organized under the laws of this state and authorized to do
190 business in this state.

191 (h) The issuer is not, before or as a result of the
192 offering, an investment company as defined in s. 3 of the
193 Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject
194 to the reporting requirements of s. 13 or s. 15(d) of the
195 Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

196 (i) Each security purchaser is notified by the issuer or
197 the selling agent that the security is not registered under this
198 chapter and that the securities are subject to the limitation on
199 resales contained in subsection (e) of United States Securities
200 and Exchange Commission Rule 147, 17 C.F.R. s. 230.147(e).

201 (j) All offering materials prominently state in bold,
202 conspicuous print:

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204 These securities are offered and will be sold in
205 reliance on an exemption from the registration
206 requirements of federal and State of Florida
207 securities laws and are not required to comply with
208 specific disclosure requirements that would apply to
209 such registration. Neither the United States
210 Securities Exchange Commission nor the Florida Office
211 of Financial Regulation has passed upon the merits of,
212 or given its approval to, the securities, the terms of
213 the offering, or the accuracy or completeness of any
214 offering materials. The securities are subject to
215 legal restrictions on transfer and resale and
216 investors should not assume that they will be able to
217 resell their securities. Investing in these securities
218 involves risk, and investors should be able to bear
219 the loss of their entire investment. All investors
220 should make their own determination of whether or not
221 to make any investment based on their own independent
222 evaluation and analysis.

223
224 (4) The exemption from registration requirements provided
225 in subsection (3) may not be used in conjunction with any other
226 exemption from registration requirements under this chapter,
227 except for offers and sales to a person owning 10 percent or
228 more of the outstanding shares of any class or classes of
229 securities or to an officer, director, partner, or trustee or a
230 person occupying similar status or performing similar functions.
231 Sales to such persons do not count toward the limitation
232 provided in paragraph (3) (c).

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233 (5) Notwithstanding subsection (4), the exemption from
234 registration requirements provided in subsection (3) may be used
235 in conjunction with the exemption from dealer registration for a
236 funding portal under s. 517.12(21).

237 (6) The liability of a funding portal exempt from
238 registration requirements under s. 517.12(21) for transactions
239 conducted in accordance with subsection (3) through its website
240 is limited to the aggregate sum of fees and commissions charged
241 for such transactions.

242 Section 5. Paragraph (b) of subsection (4) of section
243 626.9911, Florida Statutes, is amended to read:

244 626.9911 Definitions.—As used in this act, the term:

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

249 (b) In connection with a viatical settlement investment,
250 pursuant to s. 517.021(24) ~~s. 517.021(23)~~; or

251 Section 6. This act shall take effect July 1, 2014.