

1 A bill to be entitled

2 An act relating to the offer or sale of securities;
3 amending s. 517.021, F.S.; defining the term
4 "intermediary" for purposes of the Florida Securities
5 and Investor Protection Act; amending s. 517.061,
6 F.S.; exempting certain issuers and intermediaries
7 from registration requirements relating to the offer
8 or sale of certain securities; providing requirements
9 for such issuers and intermediaries; providing
10 limitations on offers or sales of securities;
11 prohibiting the use of specified exemptions from
12 registration requirements in conjunction with another
13 exemption from registration requirements; providing
14 exceptions; requiring the Office of Financial
15 Regulation to provide certain information on its
16 website; amending s. 517.12, F.S.; exempting certain
17 intermediaries from registration requirements relating
18 to the offer or sale of certain securities; conforming
19 a cross-reference; amending s. 626.9911, F.S.;
20 conforming a cross-reference; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Subsections (13) through (23) of section
26 517.021, Florida Statutes, are renumbered as subsections (14)

27 through (24), respectively, and a new subsection (13) is added
 28 to that section, to read:

29 517.021 Definitions.—When used in this chapter, unless the
 30 context otherwise indicates, the following terms have the
 31 following respective meanings:

32 (13) "Intermediary" means a natural person residing in
 33 this state, or a corporation, trust, partnership, association,
 34 or any other legal entity registered with the Secretary of State
 35 to do business in this state, that represents an issuer in a
 36 transaction involving the offer or sale of securities under s.
 37 517.062.

38 Section 2. Subsection (21) is added to section 517.061,
 39 Florida Statutes, to read:

40 517.061 Exempt transactions.—The exemption for each
 41 transaction listed below is self-executing and does not require
 42 any filing with the office prior to claiming such exemption. Any
 43 person who claims entitlement to any of the exemptions bears the
 44 burden of proving such entitlement in any proceeding brought
 45 under this chapter. The registration provisions of s. 517.07 do
 46 not apply to any of the following transactions; however, such
 47 transactions are subject to the provisions of ss. 517.301,
 48 517.311, and 517.312:

49 (21) (a) Notwithstanding any other provision of this
 50 section, the offer or sale of a security by an issuer is exempt
 51 from the registration requirements of s. 517.07, and each
 52 intermediary who represents an issuer in an offer or sale is

53 exempt from the registration requirements of s. 517.12, if the
 54 offer or sale is conducted in accordance with this subsection.

55 1. An issuer must:

56 a. Be a for-profit business entity formed under the laws
 57 of this state and be registered with the Secretary of State.

58 b. Be represented by an intermediary.

59 c. Submit a nonrefundable filing fee of \$200 and file a
 60 notice with the office in writing or in electronic form, in a
 61 format prescribed by commission rule, that:

62 (I) Indicates that the issuer is conducting an offering in
 63 reliance upon this exemption.

64 (II) Contains the names and addresses of the issuer, all
 65 persons who will be involved in the offer or sale of securities
 66 on behalf of the issuer, and the federally insured financial
 67 institution authorized to do business in this state in which
 68 investor funds will be deposited.

69 (III) Includes documentation verifying that the issuer is
 70 organized under the laws of this state and authorized to do
 71 business in this state.

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

77 e. Execute an escrow agreement with a federally insured
 78 financial institution authorized to do business in this state

79 for the deposit of investor funds.

80 f. Not be subject to a disqualification established by the
 81 commission or office or a disqualification described in United
 82 States Securities and Exchange Commission Rule 262, 17 C.F.R. s.
 83 230.262, under the Securities Act of 1933.

84 2.a. An intermediary must:

85 (I) Comply with any notice or filing requirements for
 86 exemption from registration as a broker-dealer established by
 87 rule or order of the commission or office under this chapter,
 88 which shall include annual registration and submission of a
 89 nonrefundable \$200 registration fee.

90 (II) Facilitate the offer and sale of securities.

91 (III) Provide basic information on its platform regarding
 92 the high risk of investment in and limitation on the resale of
 93 exempt securities and the potential for loss of an entire
 94 investment. The basic information shall include:

95 (A) A description of the escrow agreement that the issuer
 96 has executed and the conditions for the release of such funds to
 97 the issuer in accordance with the agreement.

98 (B) A description of whether financial information
 99 provided by the issuer has been audited by an independent
 100 certified public accountant.

101 (IV) Maintain records of the offers and sales of
 102 securities made through its platform, as prescribed by
 103 commission rule, and provide access to such records upon request
 104 by the office.

105 (V) Obtain evidence from each investor showing that the
106 investor is a resident of this state. For purposes of this
107 subparagraph, an investor that provides a legible copy of a
108 Florida driver license has provided evidence of state residency.

109 (VI) Obtain an affidavit from each investor stating that
110 the investment being made by the investor is consistent with the
111 income requirements of paragraph (e).

112 (VII) Deposit and release investor funds in escrow
113 pursuant to the escrow agreement executed by the issuer.

114 (VIII) Provide a monthly update for each offering, after
115 the first full month following the date of the offering. The
116 update must be accessible on the intermediary's platform and
117 must display the date and amount of each of sale of securities
118 in the previous calendar month.

119 (IX) Not be subject to a disqualification established by
120 the commission or office or a disqualification described in
121 United States Securities and Exchange Commission Rule 262, 17
122 C.F.R. s. 230.262, under the Securities Act of 1933.

123 b. An intermediary may not:

124 (I) Offer investment advice or recommendations. A refusal
125 by an intermediary to post an offering that it deems not
126 credible or representing a potential for fraud shall not be
127 construed as an offer of investment advice or recommendation.

128 (II) Solicit purchases, sales, or offers to buy securities
129 offered or displayed on its platform.

130 (III) Compensate employees, agents, or other persons for

131 the solicitation of purchases, sales, or offers to buy the
132 securities offered or displayed on its platform.

133 (IV) Hold, manage, possess, or otherwise handle investor
134 funds or securities.

135 3. The transaction must meet the requirements of the
136 federal exemption for intrastate offerings under s. 3(a)(11) of
137 the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United
138 States Securities and Exchange Commission Rule 147, 17 C.F.R. s.
139 230.147, under the Securities Act of 1933.

140 4. The sum of all cash and other consideration received
141 for all sales of the security in reliance upon this exemption
142 must not exceed \$1 million, less the aggregate amount received
143 for all sales of securities by the issuer within the 12 months
144 preceding the first offer or sale made in reliance upon this
145 exemption.

146 5. Unless the investor is an accredited investor as
147 defined by Rule 501 of Regulation D under the Securities Act of
148 1933, the aggregate amount sold by an issuer to an investor in
149 transactions exempt from registration requirements under this
150 subsection during a 12-month period may not exceed:

151 a. If the investor's annual income and net worth is less
152 than \$100,000, the greater of \$2,000, 5 percent of the annual
153 income of the investor, or 5 percent of the net worth of the
154 investor.

155 b. If the investor's annual income or net worth is
156 \$100,000 or more, the greater of \$100,000, 10 percent of the

157 annual income of the investor, or 10 percent of the net worth of
158 the investor.

159 6. All funds received from investors must be used in
160 accordance with representations made to investors by the
161 intermediary.

162 7. All offering materials must prominently state in bold,
163 conspicuous print:

164 These securities are offered and will be sold in
165 reliance on an exemption from the registration
166 requirements of federal and State of Florida
167 securities laws and consequently neither the federal
168 government nor the State of Florida have reviewed the
169 accuracy or completeness of any offering materials. In
170 making an investment decision, investors must rely on
171 their own examination of the issuer and the terms of
172 the offering, including the merits and risks involved.

173 These securities are subject to restrictions on
174 transferability and resale and may not be transferred
175 or resold except as specifically authorized by
176 applicable federal and state securities laws.

177 Investing in these securities involves a speculative
178 risk, and investors should be able to bear the loss of
179 their entire investment.

180 (b) The exemptions from registration requirements provided
181 in this subsection may not be used in conjunction with any other
182 exemption from registration requirements under this chapter,

183 except for offers and sales to a person owning 10 percent or
 184 more of the outstanding shares of any class or classes of
 185 securities or to an officer, director, partner, or trustee or a
 186 person occupying similar status or performing similar functions.
 187 Sales to such persons do not count toward the limitation
 188 provided in subparagraph (a)4.

189 (c) The office shall create and maintain on its website a
 190 list of all intermediaries providing offerings under this
 191 section.

192 Section 3. Subsection (20) of section 517.12, Florida
 193 Statutes, is amended to read:

194 517.12 Registration of dealers, associated persons, and
 195 investment advisers.—

196 (20) The registration requirements of this section do not
 197 apply to:

198 (a) Any general lines insurance agent or life insurance
 199 agent licensed under chapter 626, for the sale of a security as
 200 defined in s. 517.021(22)(g) ~~517.021(21)(g)~~, if the individual
 201 is directly authorized by the issuer to offer or sell the
 202 security on behalf of the issuer and the issuer is a federally
 203 chartered savings bank subject to regulation by the Federal
 204 Deposit Insurance Corporation. Actions under this subsection
 205 shall constitute activity under the insurance agent's license
 206 for purposes of ss. 626.611 and 626.621.

207 (b) An intermediary exempted from registration under s.
 208 517.061.

HB 275

2015

209 Section 4. Paragraph (b) of subsection (4) of section
210 626.9911, Florida Statutes, is amended to read:

211 626.9911 Definitions.—As used in this act, the term:

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

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

218 Section 5. This act shall take effect July 1, 2015.