

By Senator Richter

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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. Present subsections (13) through (23) of section
26 517.021, Florida Statutes, are redesignated 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

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30 context otherwise indicates, the following terms have the
31 following respective meanings:

32 (13) "Intermediary" means a natural person residing in this
33 state, or a corporation, trust, partnership, association, or any
34 other legal entity registered with the Secretary of State to do
35 business in this state, that represents an issuer in a
36 transaction involving the offer or sale of securities under s.
37 517.061.

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 of
57 this state and be registered with the Secretary of State.

58 b. Be represented by an intermediary.

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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, an
73 investment company as defined in s. 3 of the Investment Company
74 Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting
75 requirements of s. 13 or s. 15(d) of the Securities Exchange Act
76 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,

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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 provided
99 by the issuer has been audited by an independent certified
100 public accountant.

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

104 (V) Obtain evidence from each investor showing that the
105 investor is a resident of this state. An investor that provides
106 a legible copy of a Florida driver license has provided evidence
107 of state residency.

108 (VI) Obtain an affidavit from each investor stating that
109 the investment being made by the investor is consistent with the
110 income requirements of subparagraph (a)5.

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

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

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117 the previous calendar month.

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

122 b. An intermediary may not:

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

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

129 (III) Compensate employees, agents, or other persons for
130 the solicitation of purchases, sales, or offers to buy the
131 securities offered or displayed on its platform.

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

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

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

145 5. Unless the investor is an accredited investor as defined

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

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

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

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

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

163 These securities are offered and will be sold in
164 reliance on an exemption from the registration
165 requirements of federal and State of Florida
166 securities laws and consequently neither the federal
167 government nor the State of Florida have reviewed the
168 accuracy or completeness of any offering materials. In
169 making an investment decision, investors must rely on
170 their own examination of the issuer and the terms of
171 the offering, including the merits and risks involved.
172 These securities are subject to restrictions on
173 transferability and resale and may not be transferred
174 or resold except as specifically authorized by

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175 applicable federal and state securities laws.
176 Investing in these securities involves a speculative
177 risk, and investors should be able to bear the loss of
178 their entire investment.

179 (b) The exemptions from registration requirements provided
180 in this subsection may not be used in conjunction with any other
181 exemption from registration requirements under this chapter,
182 except for offers and sales to a person owning 10 percent or
183 more of the outstanding shares of any class or classes of
184 securities or to an officer, director, partner, or trustee or a
185 person occupying similar status or performing similar functions.
186 Sales to such persons do not count toward the limitation
187 provided in subparagraph (a)4.

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

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

193 517.12 Registration of dealers, associated persons, and
194 investment advisers.—

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

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

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204 subsection shall constitute activity under the insurance agent's
205 license for purposes of ss. 626.611 and 626.621.

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

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

210 626.9911 Definitions.—As used in this act, the term:

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

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

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

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

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