

**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.)

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

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BILL: CS/SB 180

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Securities Transactions

DATE: March 29, 2023

REVISED: 04/11/23

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**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bill provides many technical, clarifying, and conforming changes to ch. 517, F.S. Many provisions of ch. 517, F.S., are outdated or do not incorporate recent model acts or federal rule changes, which are designed to promote capital formation for small businesses and provide more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<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> 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.<sup>4</sup>
- 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.<sup>5</sup>

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<sup>1</sup> Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.

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

<sup>3</sup> [SEC.gov | The Laws That Govern the Securities Industry](https://www.sec.gov/laws/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.

<sup>4</sup> 17 C.F.R. s. 230.506(b).

<sup>5</sup> 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.<sup>6</sup>
- 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.<sup>7</sup>
- Intrastate offerings<sup>8</sup> 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.<sup>9</sup>

### ***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.<sup>10</sup> The SEC oversees federal securities laws<sup>11</sup> broadly aimed at (1) protecting investors; (2) maintaining fair, orderly, and efficient markets; and (3) facilitating capital formation.<sup>12</sup> 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<sup>13</sup> 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.<sup>14</sup>

### **Florida Regulation of Securities**

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

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<sup>6</sup> 17 C.F.R. s. 230.504.

<sup>7</sup> 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.

<sup>8</sup> 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A

<sup>9</sup> 17 C.F.R. s. 230.251, *et seq.*

<sup>10</sup> Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.

<sup>11</sup> Section 15, Securities and Exchange Act of 1934.

<sup>12</sup> Securities and Exchange Commission, "What We Do," at [SEC.gov | What We Do](https://www.sec.gov/WhatWeDo) (last visited March 5, 2023).

<sup>13</sup> 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>.

<sup>14</sup> CFTC, "The Commission," <https://www.cftc.gov/About/AboutTheCommission> (last visited Mar. 1, 2023).

<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> The Division of Securities within the OFR is responsible for administering the Securities and Investor Protection Act.<sup>18</sup>

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.<sup>19</sup> 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<sup>20</sup>

## **Model Acts and Model Rules**

### ***Uniform Securities Act<sup>21</sup>***

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***

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[https://www.law.cornell.edu/wex/blue\\_sky\\_law#:~:text=In%20the%20early%201900s%2C%20decades,schemes%20which%20such%20laws%20targeted.](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).

<sup>16</sup> U.S. Securities and Exchange Commission, Blue Sky Laws, <http://www.sec.gov/answers/bluesky.htm> (last visited Mar. 1, 2023).

<sup>17</sup> 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.

<sup>18</sup> Chapter 517, F.S.

<sup>19</sup> Section 517.12, F.S.

<sup>20</sup> Office of Financial Regulation, Analysis of SB 180 (Jan. 25, 2023).

<sup>21</sup> [Securities Act - Uniform Law Commission \(uniformlaws.org\)](https://www.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*.<sup>22</sup> Twelve states have adopted the model.<sup>23</sup>

### **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.

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<sup>22</sup> Model Rule [NASAA-IAR-CE-Model-Rule.pdf](#) (Nov. 24, 2020) (last visited Mar. 2, 2023).

<sup>23</sup> 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.<sup>24</sup>

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

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<sup>24</sup> [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.<sup>25</sup>

**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.

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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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<sup>25</sup> OFR, Analysis of SB 180 (Jan. 25, 2023).