

1 A bill to be entitled

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

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Paragraph (b) of subsection (6) of section  
20 517.021, Florida Statutes, is amended, present subsections (11)  
21 through (23) of that section are renumbered as subsections (12)  
22 through (24), respectively, and a new subsection (11) is added  
23 to that section, to read:

24 517.021 Definitions.—When used in this chapter, unless the  
25 context otherwise indicates, the following terms have the  
26 following respective meanings:

- 27 (6)
- 28 (b) The term "dealer" does not include the following:
- 29 1. A ~~Any~~ licensed practicing attorney who renders or
- 30 performs any of such services in connection with the regular
- 31 practice of her or his profession;
- 32 2. A ~~Any~~ bank authorized to do business in this state,
- 33 except nonbank subsidiaries of a bank;
- 34 3. A ~~Any~~ trust company having trust powers which it is
- 35 authorized to exercise in this state, which renders or performs
- 36 services in a fiduciary capacity incidental to the exercise of
- 37 its trust powers;
- 38 4. A ~~Any~~ wholesaler selling exclusively to dealers;
- 39 5. A ~~Any~~ person buying and selling for her or his own
- 40 account exclusively through a registered dealer or stock
- 41 exchange; ~~or~~
- 42 6. Pursuant to s. 517.061(11), a ~~any~~ person associated
- 43 with an issuer of securities if such person is a bona fide
- 44 employee of the issuer who has not participated in the
- 45 distribution or sale of any securities within the preceding 12
- 46 months and who primarily performs, or is intended to perform at
- 47 the end of the distribution, substantial duties for, or on
- 48 behalf of, the issuer other than in connection with transactions
- 49 in securities; or
- 50 7. A funding portal exempt from registration requirements
- 51 under s. 517.12(21).

52        (11) "Funding portal" means a corporation, trust,  
53 partnership, association, or any other legal entity registered  
54 with the Secretary of State to do business in this state which  
55 acts as an intermediary in a transaction involving the offer or  
56 sale of securities for the account of others that does not:

57        (a) Offer investment advice or recommendations. A funding  
58 portal's refusal to post or rejection of an offering that it  
59 deems not credible or that may present a potential for fraud  
60 shall not be construed as an offer of investment advice or  
61 recommendation;

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

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

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

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

71        517.07 Registration of securities.—

72        (1) It is unlawful and a violation of this chapter for any  
73 person to sell or offer to sell a security within this state  
74 unless the security is exempt under s. 517.051, is sold in a  
75 transaction exempt under s. 517.061 or s. 517.371, is a federal  
76 covered security, or is registered pursuant to this chapter.

77 Section 3. Subsection (20) of section 517.12, Florida  
78 Statutes, is amended, and subsection (21) is added to that  
79 section, to read:

80 517.12 Registration of dealers, associated persons, and  
81 investment advisers.—

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

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

94 (a) Complies with any notice or filing requirements for  
95 exemption from registration as a broker-dealer established by  
96 rule or order of the commission or office under this chapter or  
97 registration requirements for a funding portal established by  
98 the United States Securities Exchange Commission and the  
99 Financial Industry Regulatory Authority.

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

101 (c) Provides basic information on its website regarding  
102 the high risk of investment in and limitation on the resale of

103 exempt securities and the potential for loss of an entire  
 104 investment.

105 (d) Maintains records of the offers and sales of  
 106 securities made through its website and provides access to such  
 107 records upon request by the office.

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

112 Section 4. Section 517.371, Florida Statutes, is created  
 113 to read:

114 517.371 Crowdfinance exemption.-

115 (1) This section shall be known and may be cited as the  
 116 "Crowdfinance Act of 2014."

117 (2) As used in this section, the term "individual" means a  
 118 natural person residing in this state or a corporation, trust,  
 119 partnership, association, or any other legal entity, including a  
 120 funding portal, that is registered with the Secretary of State  
 121 to do business in this state and that has its principal place of  
 122 business in this state, that does not:

123 (a) Offer investment advice or recommendations;

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

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

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

130        (3) The offer or sale of a security by an issuer shall be  
 131 exempt from the registration requirements of s. 517.07, and each  
 132 individual who represents an issuer in an offer or sale shall be  
 133 exempt from the registration requirements of s. 517.12 if the  
 134 offer or sale is conducted in accordance with each of the  
 135 following requirements:

136        (a) The issuer of the security must be a for-profit  
 137 business entity formed under the laws of this state and must be  
 138 registered with the Secretary of State.

139        (b) The transaction must meet the requirements of the  
 140 federal exemption for intrastate offerings under s. 3(a)(11) of  
 141 the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United  
 142 States Securities and Exchange Commission Rule 147, 17 C.F.R. s.  
 143 230.147, under the Securities Act of 1933.

144        (c) The sum of all cash and other consideration received  
 145 for all sales of the security in reliance upon this exemption  
 146 must not exceed \$1 million, less the aggregate amount received  
 147 for all sales of securities by the issuer within the 12 months  
 148 before the first offer or sale made in reliance upon this  
 149 exemption.

150        (d) The issuer must obtain from each purchaser evidence  
 151 showing that the purchaser is a resident of this state.

152        (e) Unless the purchaser is an accredited investor as  
 153 defined by Rule 501 of Regulation D under the Securities Act of  
 154 1933, the aggregate amount sold by an issuer to an investor in

155 transactions exempt from registration requirements under this  
156 subsection during a 12-month period must not exceed:

157 1. If the investor's annual income or net worth is less  
158 than \$100,000, the greater of \$2,000, 5 percent of the annual  
159 income of the investor, or 5 percent of the net worth of the  
160 investor; or

161 2. If the investor's annual income or net worth is  
162 \$100,000 or more, the greater of \$100,000, 10 percent of the  
163 annual income of the investor, or 10 percent of the net worth of  
164 the investor.

165 (f) All funds received from investors must be deposited  
166 into a federally insured financial institution authorized to do  
167 business in this state, and all such funds must be used in  
168 accordance with representations made to investors.

169 (g) Before the use of any general solicitation or the 25th  
170 sale of the security, whichever occurs first, the issuer must  
171 file a notice with the office in writing or in electronic form,  
172 in a format prescribed by commission rule, through the office's  
173 Regulatory Enforcement and Licensing System that:

174 1. Indicates that the issuer is conducting an offering in  
175 reliance upon this exemption.

176 2. Contains the names and addresses of the issuer, all  
177 persons who will be involved in the offer or sale of securities  
178 on behalf of the issuer, and the bank or other depository  
179 institution in which investor funds will be deposited.

180 3. Includes documentation verifying that the issuer is  
 181 organized under the laws of this state and authorized to do  
 182 business in this state.

183 (h) The issuer must not be, either before or as a result  
 184 of the offering, an investment company as defined in s. 3 of the  
 185 Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject  
 186 to the reporting requirements of s. 13 or s. 15(d) of the  
 187 Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).

188 (i) Each security purchaser must be notified either by the  
 189 issuer or the selling agent that the security is not registered  
 190 under this chapter and that the securities are subject to the  
 191 limitation on resales contained in subsection (e) of United  
 192 States Securities and Exchange Commission Rule 147, 17 C.F.R.  
 193 230.147(e).

194 (j) All offering materials must prominently state in bold,  
 195 conspicuous print:

196 "These securities are offered and will be sold in reliance  
 197 on an exemption from the registration requirements of  
 198 federal and State of Florida securities laws and are not  
 199 required to comply with specific disclosure requirements  
 200 that would apply to such registration. Neither the U.S.  
 201 Securities Exchange Commission nor the Florida Office of  
 202 Financial Regulation has passed upon the merits of, or  
 203 given its approval to, the securities, the terms of the  
 204 offering, or the accuracy or completeness of any offering  
 205 materials. The securities are subject to legal restrictions



206 on transfer and resale and investors should not assume that  
207 they will be able to resell their securities. Investing in  
208 these securities involves risk, and investors should be  
209 able to bear the loss of their entire investment. All  
210 investors should make their own determination of whether or  
211 not to make any investment based on their own independent  
212 evaluation and analysis."

213 (4) The exemption from registration requirements provided  
214 in subsection (3) may not be used in conjunction with any other  
215 exemption from registration requirements under this chapter,  
216 except for offers and sales to a person owning 10 percent or  
217 more of the outstanding shares of any class or classes of  
218 securities or to an officer, director, partner, or trustee or a  
219 person occupying similar status or performing similar functions.  
220 Sales to such persons shall not count toward the limitation  
221 provided in paragraph (3) (c).

222 (5) Notwithstanding subsection (4), the exemption from  
223 registration requirements provided in subsection (3) may be used  
224 in conjunction with the exemption from dealer registration for a  
225 funding portal under s. 517.12(21).

226 Section 5. Paragraph (b) of subsection (4) of section  
227 626.9911, Florida Statutes, is amended to read:

228 626.9911 Definitions.—As used in this act, the term:

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

HB 1299

2014

232 | expectancies:

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

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