HB 1299

A bill to be entitled

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

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

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

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

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CODING: Words stricken are deletions; words underlined are additions.
(b) The term "dealer" does not include the following:

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

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

3. 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. Any wholesaler selling exclusively to dealers;

5. 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), 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 requirements under s. 517.12(21).
(11) "Funding portal" means a corporation, trust, partnership, association, or any other legal entity registered with the Secretary of State to do business in this state which acts as an intermediary in a transaction involving the offer or sale of securities for the account of others that does not:

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

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

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

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

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

517.07 Registration of securities.—

(1) It is unlawful and a violation of this chapter for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061 or s. 517.371, is a federal covered security, or is registered pursuant to this chapter.
Section 3. Subsection (20) of section 517.12, Florida Statutes, is amended, and subsection (21) is added to that section, to read:

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

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

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

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

(b) Facilitates the offer and sale of securities.

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

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

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

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

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

517.371 Crowdfinance exemption.—

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

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

(a) Offer investment advice or recommendations;

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

(c) Compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to purchase the securities exempted by this section; or
(d) Take custody of investor funds or securities.

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

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

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

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

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

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

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

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

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

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

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

2. Contains the names and addresses of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and the bank or other depository institution in which investor funds will be deposited.
3. Includes documentation verifying that the issuer is organized under the laws of this state and authorized to do business in this state.

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

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

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

"These securities are offered and will be sold in reliance on an exemption from the registration requirements of federal and State of Florida securities laws and are not required to comply with specific disclosure requirements that would apply to such registration. Neither the U.S. Securities Exchange Commission nor the Florida Office of Financial Regulation has passed upon the merits of, or given its approval to, the securities, the terms of the offering, or the accuracy or completeness of any offering materials. The securities are subject to legal restrictions..."
on transfer and resale and investors should not assume that they will be able to resell their securities. Investing in these securities involves risk, and investors should be able to bear the loss of their entire investment. All investors should make their own determination of whether or not to make any investment based on their own independent evaluation and analysis."

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

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

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

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

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

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

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