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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
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The Committee on Banking and Insurance (Negron) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (22) is added to section 517.061,  
Florida Statutes, to read:

517.061 Exempt transactions.—Except as otherwise provided  
in s. 517.0611 for a transaction listed in subsection (21), the  
exemption for each transaction listed below is self-executing  
and does not require any filing with the office before claiming



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11 the exemption. Any person who claims entitlement to any of the  
12 exemptions bears the burden of proving such entitlement in any  
13 proceeding brought under this chapter. The registration  
14 provisions of s. 517.07 do not apply to any of the following  
15 transactions; however, such transactions are subject to the  
16 provisions of ss. 517.301, 517.311, and 517.312:

17 (22) The offer or sale of securities, solely in connection  
18 with the transfer of ownership of an eligible privately held  
19 company, through a merger and acquisition broker in accordance  
20 with s. 517.12(22).

21 Section 2. Subsection (22) is added to section 517.12,  
22 Florida Statutes, to read:

23 517.12 Registration of dealers, associated persons,  
24 intermediaries, and investment advisers.—

25 (22) (a) As used in this subsection, the term:

26 1. "Broker" has the same meaning as "dealer" as defined in  
27 s. 517.021.

28 2. "Control person" means an individual or entity that  
29 possesses the power, directly or indirectly, to direct the  
30 management or policies of a company through ownership of  
31 securities, by contract, or otherwise. A person is presumed to  
32 be a control person of a company if, with respect to a  
33 particular company, the person:

34 a. Is a director, a general partner, a member, or a manager  
35 of a limited liability company, or is an officer who exercises  
36 executive responsibility or has a similar status or function;

37 b. Has the power to vote 20 percent or more of a class of  
38 voting securities or has the power to sell or direct the sale of  
39 20 percent or more of a class of voting securities; or



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40 c. In the case of a partnership or limited liability  
41 company, may receive upon dissolution, or has contributed, 20  
42 percent or more of the capital.

43 3. "Eligible privately held company" means a company that  
44 meets all of the following conditions:

45 a. The company does not have any class of securities which  
46 is registered, or which is required to be registered, with the  
47 United States Securities and Exchange Commission under the  
48 Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or  
49 with the office under s. 517.07, or for which the company files,  
50 or is required to file, summary and periodic information,  
51 documents, and reports under Section 15(d) of the Securities  
52 Exchange Act of 1934, 15 U.S.C. s. 78o(d).

53 b. In the fiscal year immediately preceding the fiscal year  
54 during which the merger and acquisition broker begins to provide  
55 services for the securities transaction, the company, in  
56 accordance with its historical financial accounting records, has  
57 earnings before interest, taxes, depreciation, and amortization  
58 of less than \$25 million or has gross revenues of less than \$250  
59 million. On July 1, 2016, and every 5 years thereafter, each  
60 dollar amount in this sub-subparagraph shall be adjusted by  
61 dividing the annual value of the Employment Cost Index for wages  
62 and salaries for private industry workers, or any successor  
63 index, as published by the Bureau of Labor Statistics, for the  
64 calendar year preceding the calendar year in which the  
65 adjustment is being made, by the annual value of such index or  
66 successor index for the calendar year ending December 31, 2012,  
67 and multiplying such dollar amount by the quotient obtained.  
68 Each dollar amount determined under this sub-subparagraph shall



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69 be rounded to the nearest multiple of \$100,000.

70 4. "Merger and acquisition broker" means any broker and any  
71 person associated with a broker engaged in the business of  
72 effecting securities transactions solely in connection with the  
73 transfer of ownership of an eligible privately held company,  
74 regardless of whether that broker acts on behalf of a seller or  
75 buyer, through the purchase, sale, exchange, issuance,  
76 repurchase, or redemption of, or a business combination  
77 involving, securities or assets of the eligible privately held  
78 company.

79 5. "Public shell company" means a company that at the time  
80 of a transaction with an eligible privately held company:

81 a. Has any class of securities which is registered, or  
82 which is required to be registered, with the United States  
83 Securities and Exchange Commission under the Securities Exchange  
84 Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under  
85 s. 517.07, or for which the company files, or is required to  
86 file, summary and periodic information, documents, and reports  
87 under Section 15(d) of the Securities Exchange Act of 1934, 15  
88 U.S.C. s. 78o(d);

89 b. Has nominal or no operations; and

90 c. Has nominal assets or no assets, assets consisting  
91 solely of cash and cash equivalents, or assets consisting of any  
92 amount of cash and cash equivalents and nominal other assets.

93 (b) Prior to the completion of any securities transaction  
94 described in s. 517.061(22), a merger and acquisition broker  
95 must receive written assurances from the control person with the  
96 largest percentage of ownership for both the buyer and seller  
97 engaged in the transaction that:



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98           a. After the transaction is completed, any person who  
99 acquires securities or assets of the eligible privately held  
100 company, acting alone or in concert, will be a control person of  
101 the eligible privately held company or will be a control person  
102 for the business conducted with the assets of the eligible  
103 privately held company; and

104           b. If any person is offered securities in exchange for  
105 securities or assets of the eligible privately held company,  
106 such person will, before becoming legally bound to complete the  
107 transaction, receive or be given reasonable access to the most  
108 recent year-end financial statements of the issuer of the  
109 securities offered in exchange. The most recent year-end  
110 financial statements shall be customarily prepared by the  
111 issuer's management in the normal course of operations. If the  
112 financial statements of the issuer are audited, reviewed, or  
113 compiled, the most recent year-end financial statements must  
114 include any related statement by the independent certified  
115 public accountant; a balance sheet dated not more than 120 days  
116 before the date of the exchange offer; and information  
117 pertaining to the management, business, results of operations  
118 for the period covered by the foregoing financial statements,  
119 and material loss contingencies of the issuer.

120           (c) A merger and acquisition broker engaged in a  
121 transaction exempt under s. 517.061(22) is exempt from  
122 registration under this section unless the merger and  
123 acquisition broker:

124           1. Directly or indirectly, in connection with the transfer  
125 of ownership of an eligible privately held company, receives,  
126 holds, transmits, or has custody of the funds or securities to



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- 127 be exchanged by the parties to the transaction;  
128 2. Engages on behalf of an issuer in a public offering of  
129 any class of securities which is registered, or which is  
130 required to be registered, with the United States Securities and  
131 Exchange Commission under the Securities Exchange Act of 1934,  
132 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;  
133 or for which the issuer files, or is required to file, periodic  
134 information, documents, and reports under Section 15(d) of the  
135 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);  
136 3. Engages on behalf of any party in a transaction  
137 involving a public shell company;  
138 4. Is subject to a suspension or revocation of registration  
139 under Section 15(b) (4) of the Securities Exchange Act of 1934,  
140 15 U.S.C. s. 78o(b) (4);  
141 5. Is subject to a statutory disqualification described in  
142 Section 3(a) (39) of the Securities Exchange Act of 1934, 15  
143 U.S.C. s. 78c(a) (39);  
144 6. Is subject to a disqualification under U.S. Securities  
145 and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or  
146 7. Is subject to a final order described in Section  
147 15(b) (4) (H) of the Securities Exchange Act of 1934, 15 U.S.C. s.  
148 78o(b) (4) (H).

149 Section 3. This act shall take effect July 1, 2016.

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151 ===== T I T L E A M E N D M E N T =====

152 And the title is amended as follows:

153 Delete everything before the enacting clause  
154 and insert:

155 A bill to be entitled



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156 An act relating to merger and acquisition brokers;  
157 amending s. 517.061, F.S.; providing an exemption from  
158 certain registration requirements with the Office of  
159 Financial Regulation for a specified offer or sale of  
160 securities; amending s. 517.12, F.S.; defining terms;  
161 requiring a merger and acquisition broker to receive  
162 certain written assurances from a specified person  
163 prior to the completion of specified securities  
164 transactions; providing an exemption from certain  
165 registration requirements with the office for a merger  
166 and acquisition broker under certain circumstances;  
167 specifying disqualifying conditions for the exemption;  
168 providing an effective date.