

Committee on Banking and Insurance

CS/CS/SB 532 — Securities

by Fiscal Policy Committee; Banking and Insurance Committee; and Senator Brodeur

The bill substantially revises ch. 517, F.S., the “Securities and Investor Protection Act” (Act). The Office of Financial Regulation (OFR) is responsible for administering the provisions of this chapter. The bill is based on the recommendations contained in the report issued by the Chapter 517 Task Force of the Business Law Section of The Florida Bar in coordination with the OFR. The impetus for the task force is to increase the ability of small and developing Florida businesses to raise capital, while at the same time assuring and improving investor protections and enforcement measures to guard against abuse. Since ch. 517, F.S., has not been substantially updated in many years, the bill also incorporates many small business financing provisions consistent with recently adopted federal rules or legislation adopted in other states. The bill includes the following changes:

- Revises eligibility and recovery provisions relating to the Securities Guaranty Fund (Fund), which was created to provide relief to victims of securities violations under ch. 517, F.S., who are entitled to monetary damages or restitution but cannot recover the full amount of such damages or restitution from the wrongdoer, in the following manner:
 - The bill removes a requirement that an investor who has received a final judgement that is unsatisfied must make searches and inquires to ascertain the assets of the judgment debtor, which may result in delays. Further, the bill removes a two-year waiting period for payment; and
 - The bill increases the amount an eligible person may recover from the Fund from \$10,000 to \$15,000, adds an exception allowing recovery of up to \$25,000 if the person is a specified adult, and increasing the aggregate limit on claims from \$100,000 to \$250,000.
 - A specified adult is a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.
- Eliminates a registration exemption for short-term notes of \$25,000 or more, which have a maturity date of nine months or less. This type of offering is often the subject of abusive efforts by persons trying to evade registration requirements through the issuance of short-term notes to non-accredited investors. There is no comparable provision in the Uniform Securities Act and currently such notes cannot be sold under federal exemptions that preempt state registration.
- Excludes certain industrial revenue bonds and commercial development bonds issued by the United States or a state or local government from a registration exemption unless the bonds are guaranteed by a publicly traded entity. This exclusion is based on the increased risk to investors under such bonds, which depend upon revenue streams for their funding.
- Provides that exempt transactions authorized pursuant to s. 517.061, F.S., are subject to the anti-fraud provisions of s. 517.301, F.S.

- Requires a person who has six or more clients, rather than more than 15 clients, to register with the OFR as an investment adviser.

Investor Protections

Access to Capital Formation and Investment Options

- Revises the regulatory provisions relating to the intrastate crowdfunding exemption, and renames the section, the “Florida Limited Offering Exemption.” These changes include increasing the maximum offering limit from one million to five million dollars, which is consistent with the federal crowdfunding rules, and reducing the technical and regulatory requirements for issuers. The issuer may engage in general advertising and general solicitation of the offering.
- Creates the “Florida Invest Local Exemption,” a micro-offering exemption that allows an issuer to offer up to \$500,000 in securities to residents of Florida in reliance upon the exemption. An issuer may not accept more than \$10,000 from any single purchaser, unless the purchaser is an accredited investor or other specified group, for which there are no sale limits. The issuer may engage in general advertising and general solicitation of the offering.
- Revises the limited offering exemption to require a disclosure regarding a purchaser’s right to void the transaction within three days from the date of purchase, and to allow additional eligible purchasers that would be excluded for purposes of the 35 purchaser limit, consistent with the Securities and Exchange Commission rules.
- Creates an exemption for a non-issuer transaction with a federal covered adviser managing investments in excess of \$100 million, which is consistent with the provisions of the Uniform Securities Act.

Modernization of Chapter 517, Florida Statutes

- Adopts provisions consistent with federal rules that allow issuers to have greater access to potential investors through demonstration day (demo-day) presentations and the pre-offering (testing the waters) solicitations and communications, which allows an issuer to determine whether there is any interest in a contemplated offering of exempt securities prior to incurring the expense of preparing and conducting an offering.
- Eliminates the requirement that issuers of simplified securities offerings that use the Small Company Offering Registration (SCOR) must submit annual financial reports for the first five years following the effective date of an offering. The SCOR offering was designed for use by companies seeking to raise capital through a public offering exempt from registration under the Securities Act of 1933.
- Adopts provisions consistent with the integration of offering federal rule that provides offers and sales of securities will not be integrated if, based on the particular facts and circumstances, the issuer can establish each offering either complies with the registration requirements of the Securities Act of 1933, or that an exemption from registration is available for the particular offering.
- Adopts an exemption for accredited investors, which is consistent with the North American Securities Administrators Association accredited investor exemption model. The provision exempts offers and sales from registration if the offers and sales are made

only to persons in Florida who are, or the issuer reasonably believes are, accredited investors. Accredited investors are considered financially sophisticated investors based upon criteria such as, income, net worth, or professional experience. This exemption is an important option for small businesses attempting to raise capital.

- Clarifies, consolidates, and reorganizes provisions within ch. 517, F.S., and adopts provisions consistent with the Uniform Securities Act.

State Enforcement Authority

- Increases the amount of civil penalties the OFR may petition the court to impose against a defendant and authorizes the imposition of a civil penalty of twice the amount that would otherwise be imposed if a specified adult is the victim of a violation of ch. 517, F.S. The bill also authorizes the OFR to recover any costs and attorney fees relating to any investigation or enforcement.
- Establishes joint and several liability for any control person who is found to have violated any provision of the Act.
- Provides a person who knowingly and recklessly provides substantial assistance to another person in violation of a provision of the Act is deemed to violate the provision to the same extent as the person to whom such assistance was provided.
- Allows the OFR to issue and serve upon a person a cease and desist order if the OFR has reason to believe the person violates any provision of the Act, as well as an emergency cease and desist order under certain circumstances.
- Grants authority to the OFR to impose and collect an administrative fine against any person found to have violated any provision of the Act.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect October 1, 2024.

Vote: Senate 39-1; House 113-0