

Commerce Committee

Monday, April 7, 2025
3:00 PM - 6:00 PM
Webster Hall (212 Knott)

Meeting Packet

Daniel Perez
Speaker

James Buchanan
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Monday, April 7, 2025
3:00 pm – 6:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. **Consideration of the following bill(s):**

- CS/HB 379 Securities by Insurance & Banking Subcommittee, Barnaby
- CS/HB 453 Pool/Spa Contractors by Industries & Professional Activities Subcommittee, Smith, Alvarez, D.
- CS/HB 541 Minimum Wage Requirements by Careers & Workforce Subcommittee, Chamberlin
- HB 703 Utility Relocation by Robinson, W.
- CS/HB 867 Indemnification and Insurance Obligations of Commuter Rail Transportation Providers by Economic Infrastructure Subcommittee, Lopez, V.
- HB 955 Employment Eligibility by Jacques
- CS/HB 1161 Removal of Altered Sexual Depictions Posted without Consent by Industries & Professional Activities Subcommittee, Duggan

V. Closing Remarks

VI. Adjournment

214 House Office Building, 402 South Monroe Street, Tallahassee, Fl 32399-1300
(850) 717-4870

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 379	**COMPANION BILL:** CS/SB 988 (Truenow)
TITLE: Securities	**LINKED BILLS:** None
SPONSOR(S): Barnaby	**RELATED BILLS:** None

Committee References

Insurance & Banking
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Commerce

SUMMARY

Effect of the Bill:

The Florida Securities and Investor Protection Act (the Act) governs the registration and examination of firms, branches, and individuals offering investment services in the state. The Office of Financial Regulation Division of Securities (OFR) is responsible for administering and enforcing compliance with the Act.

The bill makes many changes throughout the Act. In general, the bill:

- Expands the list of securities transactions that are exempt from registration;
- Requires the Financial Services Commission to consider certain factors when designating a foreign securities exchange or foreign securities market by rule;
- Amends the Florida Invest Local Exemption to require an issuer to file a written consent to service of process with OFR prior to commencing an offer;
- Removes the requirement for OFR to find that an issuer's enterprise or business is not based on unsound business principles in order to approve the issuer's application for registration;
- Limits the application of the Act's disqualification provision as it relates to SEC Rule 506(d);
- Specifies certain persons that must submit fingerprints to the Department of Law Enforcement; and
- Clarifies certain eligibility and application requirements for persons seeking payment from the Securities Guaranty Fund.

Fiscal or Economic Impact:

The bill has an indeterminate impact on the private sector and an indeterminate impact on state government.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill makes many changes throughout the Florida Securities and Investor Protection Act (Act), which is codified in chapter 517, F.S.

Definitions

The bill creates definitions for the following terms, as such terms are used in the Act:

- "Branch manager" means a natural person who administers or supervises the affairs or operations of a branch office.
- "Corporation" has the same meaning as the terms "corporation," "domestic corporation," "foreign corporation," "nonprofit corporation," or "foreign nonprofit corporation" are defined under the Florida Business Corporation Act.[1]

[1] "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under chapter 607, F.S., the Florida Business Corporation Act. S. 607.01401(13), F.S. "Foreign corporation" means an entity

- "Director" means a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing or exercising control over its officers.
- "General partner" means a co-owner or manager of a partnership who has unlimited liability for the partnership's debts, including a "general partner" as that term is defined in the Florida Revised Uniform Limited Partnership Act of 2005.[2]
- "Limited liability company" has the same meaning as the terms "limited liability company" or "foreign limited liability company" are defined under the Florida Revised Limited Liability Company Act.[3]
- "Limited liability company manager" or "limited liability managing member" means a person who is responsible alone or in concert with others for performing the management functions of a limited liability company.
- "Limited partner" means a co-owner of a partnership who has limited liability for the partnership's debts, including a "limited partner" as that term is defined in the Florida Revised Uniform Limited Partnership Act of 2005.[4]
- "Partnership" means two or more persons carrying on as co-owners of a business and including a "limited partnership," "limited liability limited partnership," "foreign limited partnership," or "foreign limited liability limited partnership," as those terms are defined in the Florida Revised Uniform Limited Partnership Act.
- "Shareholder" means a person who owns at least one share of a corporation and whose ownership is reflected in the records of the corporation.
- "Trust" has the same meaning as defined under the Florida Probate Code.[5] (Section 1.)

The bill amends the definition of "intermediary" to mean a person that facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state. (Section 1.)

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incorporated or organized under laws other than the laws of Florida which would be a corporation for profit if incorporated under the laws of Florida. S. 607.01401(36), F.S.

[2] "General partner" means: (a) with respect to a limited partnership, a person that becomes a general partner under s. 620.1401, F.S., or was a general partner in a limited partnership when the limited partnership became subject to the Florida Revised Uniform Limited Partnership Act of 2005 pursuant to ss. 620.2204(1) or (2), F.S.; (b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership. S. 620.1102(9), F.S.

[3] "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed or existing under chapter 605, F.S., the Florida Revised Limited Liability Company Act, or an entity that becomes subject to chapter 605 pursuant to ss. 605.1001-605.1072, F.S. S. 605.0102(36), F.S. "Foreign limited liability company" means an unincorporated entity that was formed in a jurisdiction other than Florida and is denominated by that law as a limited liability company. S. 605.0102(26), F.S.

[4] "Limited partner" means: (a) with respect to a limited partnership, a person that becomes a limited partner under s. 620.1301, F.S. or was a limited partner in a limited partnership when the limited partnership became subject to the Florida Revised Uniform Limited Partnership Act of 2005 pursuant to ss. 620.2204(1) or (2), F.S.; (b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership. S. 620.1102(11), F.S.

[5] "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, F.S., except to the extent provided in s. 689.071(7), F.S.; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another. S. 731.201(38), F.S.

Exempt Transactions

The bill expands the list of securities transactions that are currently exempt from registration under the Act. Under the bill, the offer or sale of securities to the following individuals are exempt:

- A savings and loan association, building and loan association, cooperative bank, homestead association, or credit union, which is supervised and examined by a state or federal authority having supervision over any such institution.
- A federal covered adviser, investment adviser registered pursuant to the laws of a state, exempt reporting adviser or private fund adviser as those terms are defined in s. 517.12(23)(a)2. and 3, F.S.[6] respectively, investment adviser relying on the exemption from registering with the Securities and Exchange Commission under s. 203(l) or (m) of the Investment Advisers Act of 1940, as amended, business development company as defined in s. 2(a)(48) of the Investment Company Act of 1940, as amended, or business development company as defined in s. 202(a)(22) of the Investment Advisers Act of 1940, as amended.
- A small business investment company licensed by the Small Business Administration under s. 301(c) of the Small Business Investment Act of 1958, as amended, or rural business investment company as defined in s. 384A of the Consolidated Farm and Rural Development Act.
- A plan established and maintained by a state, a political subdivision thereof, or any agency or instrumentality of a state or a political subdivision, for the benefit of its employees, if such plan has total assets in excess of $5 million, an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as described in s. 3(21) of such act, which is a bank, savings and loan association, insurance company, or federal covered adviser, or if the employee benefit plan has total assets in excess of $5 million or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors. (Section 2.)

The bill also exempts the offer or sale of securities to the following entities:

- An organization described in s. 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million.
- A trust, with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Rule 506(b)(2)(ii),[7] as amended.
- An entity of a type not listed above which owns investments as defined in Securities and Exchange Commission Rule 2a51-1(b),[8] as amended, in excess of $5 million and is not formed for the specific purpose of acquiring the securities offered.
- A family office as defined in Securities and Exchange Commission Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940,[9] as amended, provided that:
    - The family office has assets under management in excess of $5 million;
    - The family office is not formed for the specific purpose of acquiring the securities offered; and
    - The prospective investment of the family office is directed by a person who has knowledge and experience in financial and business matters that the family office is capable of evaluating the merits and risks of the prospective investment.
- An entity in which all of the equity owners are one of the types of entities described above or is a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity. (Section 2.)

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[6] The bill renumbers current subsection (22) in s. 517.12, F.S. to (23). Under s. 517.12(22)(a)2., F.S., "exempt reporting adviser" has the same meaning as in the Glossary of Terms to Form ADV, the uniform application for investment adviser registration, 17 C.F.R. s. 279.1. Under s. 517.12(22)(a)3., F.S., "private fund adviser" means an investment adviser who provides advice to solely one or more qualifying private funds.

[7] 17 C.F.R. s. 230.506(b)(2)(ii).

[8] 17 C.F.R s. 270.2a51-1(b).

[9] 17 C.F.R. s. 275.202(a)(11)(G)-1

The bill amends the requirements for an issuer claiming the exemption identified in subsection (11) of the Florida statute that lists the Act's exempt transactions.[10] The bill requires that the issuer, within 15 days after the first sale in Florida, file with OFR an irrevocable written consent to service of civil process, similar to that provided in s. 517.101, F.S. in addition to the materials currently required to be filed with OFR under subsection (11) of such statute.[11] (Section 2.)

Foreign Securities Exchange

The bill clarifies that the conditions to claim the Act's exemption relating to foreign securities markets must be met at the time of the transaction that is the subject of the claimed exemption. (Section 2.)

The bill also removes the Act's designation of Canada, together with its provinces and territories, as a foreign jurisdiction, and also removes the Act's designation of the Toronto Stock Exchange, Inc., as a foreign securities exchange. Going forward, foreign securities markets and foreign securities exchanges will be designated by rule of the Financial Services Commission (Commission). (Section 2.)

Moreover, under the bill, the Commission must consider certain factors when designating a foreign securities exchange or foreign securities market under the Act. The factors to consider include the foreign securities market's or foreign security exchange's:

- Organization under foreign law.
- Association with a generally recognized community of dealers, financial institutions, or other professional intermediaries with an established operating history.
- Oversight by a governmental or self-regulatory body.
- Oversight standards set by general law.
- Reporting of securities transactions on a regular basis to a governmental or self-regulatory body.
- A system for exchange of price quotations through common communications media.
- An organized clearance and settlement system.
- Listing in Securities and Exchange Commission Regulation S Rule 902. (Section 2.)

Florida Invest Local Exemption

The bill requires that an issuer making an offering under the Florida Invest Local Exemption must file with OFR, in addition to the disclosure statement required by the exemption, a notice of transaction on a form prescribed by Commission rule, and an irrevocable written consent to service of civil process, similar to that provided in s. 517.101, F.S. (Section 3.)

"Bad Actor" Disqualification

The bill limits the application of the Act's disqualification provision to only certain persons and entities subject to SEC Rule 506(d).[12] Under the bill, a registration exemption provided by the Act is not available to an issuer if, *at the time the issuer makes an offer for the sale of a security*, any of the following entities would be disqualified under SEC Rule 506(d):

- The issuer;
- A predecessor of the issuer;
- An affiliated issuer;
- A director, executive officer, or other officer of the issuer participating in the offering;
- A general partner or managing member of the issuer;
- A beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; or
- A promoter connected with the issuer in any capacity at the time of the sale. (Section 5.)

[10] *See* s. 517.061, F.S.

[11] The other materials to be filed include a notice of transaction and a copy of the general announcement of the sale. S. 517.061(11)(f), F.S.

[12] 17 C.F.R. s. 230.506(d).

For the avoidance of doubt, the bill clarifies that the disqualification under SEC Rule 506(d) does not apply to any other person or entity listed in such Rule other than those expressly listed in the bill. (Section 5.)

Registration Requirements

The bill eliminates the requirement that OFR find, in order to approve a security for registration under the Act, that the enterprise or business of the security's issuer is not based upon unsound business principles. The bill does not remove any of the other findings that OFR must make in order to register a security under the Act. (Section 7.)

Requirements to Submit Fingerprints

The bill significantly revises the Act's current requirements for submitting fingerprints to the Department of Law Enforcement (DLE). Under the bill, the following natural persons must submit a full set of fingerprints to DLE or to a vendor, entity, or agency authorized under s. 943.053(13), F.S. for live-scan processing in accordance with rules adopted by the Commission:

- A natural person filing with OFR an application for registration as an associated person or intermediary.
- A natural person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, or director for an applicant that is a dealer, investment adviser, or intermediary.
- A natural person who is a 5 percent or more owner of an applicant that is a dealer, investment adviser, or intermediary.
- With respect to each 5 percent or more owner of an applicant that is a dealer, investment adviser, or intermediary that is a corporation, partnership, trust, or limited liability company, each natural person who is a 25 percent or more owner or trustee of such entity, and each natural person who is a 25 percent or more owner or trustee at each level up the chain of ownership up to, but not including, an entity subject to sections 12 or 15(d) of the Securities Exchange Act of 1934. (Section 8.)

For purposes of the bill's requirements relating to fingerprinting for the above individuals, the term "owner" means:

- A shareholder who owns a percentage of a class of voting securities of a dealer or investment adviser applicant, and includes any person who owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, the percentage of a class of a voting security of the dealer or investment adviser applicant specified in sub-subparagraph c. or d. above. For purposes of this provision, a person beneficially owns the securities if the securities are:
    - Owned by the shareholder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or
    - Securities that the shareholder has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the securities.
- A general partner of a partnership, and a limited partner of a partnership who has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant.
- A trustee of a trust that owns a percentage of a class of a voting security of an applicant that is a dealer, investment adviser, or intermediary, or that has the right to receive upon dissolution, or has contributed, a percentage of the capital of such applicant.
- A member of a limited liability company who has the right to receive upon dissolution, or has contributed, a percentage of the capital of an applicant that is a dealer, investment adviser, or intermediary, and all limited liability company managers of a dealer or investment adviser applicant. (Section 8.)

Under the bill, a vendor, entity, or agency authorized under s. 943.053(13), F.S., to submit fingerprints electronically to the DLE must submit the fingerprints to DLE for state processing, and DLE must then forward the fingerprints to the Federal Bureau of Investigation (FBI) for national processing. The bill requires that the fees for state and federal fingerprint processing must be borne by the person subject to the criminal history record check. (Section 8.)

The bill requires OFR to review the results of the state and federal criminal history record checks and determine whether the applicant is disqualified from registration. Under the bill, the Commission may waive by rule the bill's

requirement that the persons listed in the bill submit fingerprints or the bill's requirement that such fingerprints be processed by DLE or the FBI. (Section 8.)

Exemption from Registration for Certain M&A Brokers

The bill essentially adopts the changes adopted by the North American Securities Administrators Association (NASAA) in May of 2024 to the NASAA's Model Rule Exempting Certain Merger & Acquisition Brokers (M&A Brokers) from Registration (Model Rule). Specifically, the bill adopts the Model Rule's definition of "business combination related shell company," which defines the term as a shell company that is formed by an entity that is not a shell company solely for the purpose of:

- Changing the corporate domicile of the entity solely within the United States; or
- Completing a business combination transaction, as defined in 17 C.F.R. s. 230.165(f), among one or more entities other than the company itself, none of which is a shell company. (Section 8.)

The bill requires that an M&A broker, for purposes of the Act's exemption, must receive additional written assurances, prior to the completion of a securities transaction, from any person that, after the transaction is completed, will be active in the management of the eligible privately held company or the business conducted with the assets of such company. (Section 8.)

The bill also provides that an M&A broker engaged in a transaction exempt under s. 517.061(7), F.S., is exempt from registration unless the M&A broker:

- Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;
- Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the SEC under the Securities Exchange Act of 1934, or with OFR under s. 517.07, F.S.; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934;
- Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company;
- Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company;
- Assists any party to obtain financing from an unaffiliated third party without:
  - Complying with all other applicable laws in connection with such assistance; and
  - Disclosing any compensation in writing to the party;
- Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation;
- Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker to acquire the eligible privately held company;
- Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers;
- Binds a party to a transfer of ownership of an eligible privately held company; or
- Is subject to, or an officer, director, member, manager, partner, or employee of the broker is subject to, the certain disciplinary actions. (Section 8.)

Securities Guaranty Fund

The bill creates a definition for the term "restitution order," as such term is used in the Act's provisions relating to the Securities Guaranty Fund. The bill defines the term as a court order awarding a specified monetary amount to a named aggrieved party for a violation of s. 517.07, F.S. or s. 517.301, F.S., to be paid by a named violator. (Section 9.)

The bill revises the conditions that a person must meet to be eligible for payment from the Securities Guaranty Fund to cover instances involving restitution orders. The bill also revises the minimum information that is

required to be included on an application for payment from the Securities Guaranty Fund to cover instances involving restitution orders. (Section 9.)

RULEMAKING:

The bill removes the Act's designation of specific foreign securities exchanges and foreign securities markets and, in its place, requires the Commission to designate such foreign exchanges and markets by rule and requires the Commission to consider certain factors when making such designation. The bill also allows the Commission to modify the dollar figures for the eligibility of a privately held company, for purposes of the Act's exemption related to merger and acquisition brokers, by rule.

New rules will need to be adopted to implement the above-referenced changes made by the bill.[13]

Lawmaking is a legislative power; however, the Legislature may delegate a portion of such power to executive branch agencies to create rules that have the force of law. To exercise this delegated power, an agency must have a grant of rulemaking authority and a law to implement.

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The revenue collected for the state portion of a state and national criminal history record check is $24, which goes into the Department of Law Enforcement's Operating Trust Fund.[14] The impact of the bill's provisions relating to the Act's fingerprinting requirements is unknown at this time.[15]

PRIVATE SECTOR:

The bill has a minimal positive impact on the private sector, as the bill modernizes Florida's securities laws to align with recent developments in federal securities laws and model securities laws for states.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Federal Securities Laws

There are several major federal securities laws that govern securities offerings in the United States. The Securities Exchange Act of 1933 (the 1933 Act) generally requires that investors receive financial and other significant information concerning securities being offered for public sale, and prohibits deceit, misrepresentations, and other fraud in the sale of securities.[16]

With the Securities Exchange Act of 1934 (1934 Act), Congress created the Securities and Exchange Commission (SEC).[17] The SEC's authority under the 1934 Act includes, but is not limited to, the power to register, regulate, and oversee brokerage firms, transfer agents, clearing agencies, and the nation's securities self-regulatory organizations (SROs).[18] The various securities exchanges, such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options are SROs.[19] The Financial Industry Regulatory Authority (FINRA) is also an SRO.[20]

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[13] *Supra*, note 54, at p. 11.
[14] Florida Department of Law Enforcement, Agency Analysis of 2025 HB 379, p. 3 (Feb. 7, 2025).
[15] *Id.*
[16] U.S. Securities and Exchange Commission, *Statutes and Regulations*, https://www.sec.gov/rules-regulations/statutes-regulations#secact1933 (last visited Feb. 28, 2025).
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

Other federal securities laws include the Trust Indenture Act of 1939, Investment Company Act of 1940, Investment Advisers Act of 1940, Sarbanes-Oxley Act of 2002, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and Jumpstart Our Business Startups Act of 2012.[21]

Florida's Securities Laws

In addition to the federal securities laws, every state has its own set of securities laws, which are commonly referred to as "Blue Sky Laws."[22] Like the federal securities laws, Blue Sky Laws are designed to protect investors against fraudulent sales practices and activities.[23] Chapter 517, F.S., codifies the Florida Securities and Investor Protection Act (Act), which governs the registration and examination of firms, branches, and individuals offering investment services in the state.[24]

The Act prohibits dealers and associated persons from offering or selling securities in Florida unless registered with the Office of Financial Regulation (OFR) or specifically exempted.[25] Additionally, all securities in Florida must be registered with OFR unless they meet one of the exemptions under the Act,[26] or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[27]

Failure to meet the precise requirements of the Act's exemptions can subject the violator to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony.[28] Civil remedies under the Act include rescission and damages.[29]

Office of Financial Regulation: Division of Securities

The Division of Securities (Division), housed within the Office of Financial Regulation (OFR),[30] is responsible for administering and enforcing compliance with the Act.[31] The Division carries out its duties through its two bureaus. The Bureau of Registration registers securities firms and their employees to conduct business in, to, or from the state.[32] The Bureau of Enforcement receives and processes consumer complaints regarding securities industry activities and participants, conducts examinations of securities firms and their employees, and develops enforcement actions brought by OFR for violations of the Act.[33]

As of June 30, 2023, the Division had total active registrants in the following areas:

- Dealers and investment adviser firms: 10,701
- Branch offices: 11,667
- Individual associated persons: 373,710
- Crowdfunding intermediaries: 2[34]

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[21] For further information on the various federal securities laws, *see* https://www.sec.gov/rules-regulations/statutes-regulations#secact1933 (last visited Feb. 28, 2025).
[22] U.S. Securities and Exchange Commission, *Blue Sky Laws*, https://www.investor.gov/introduction-investing/investing-basics/glossary/blue-sky-laws (last visited Feb. 28, 2025).
[23] *Id.*
[24] *Id.*
[25] *See* s. 517.12, F.S.
[26] *See* ss. 517.051, F.S. and 517.061, F.S.
[27] S. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S. requires the broker or issuer to notify OFR that the security is registered with the SEC.
[28] S. 517.302(1), F.S.
[29] S. 517.211, F.S.
[30] The Financial Services Commission, comprised of the Governor and the Cabinet, serves as OFR's agency head for purposes of rulemaking and appoints OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within OFR's regulatory authority. S. 20.121(3), F.S.
[31] Office of Financial Regulation, *Long Range Program Plan*, Sep. 2023, at p. 22, http://floridafiscalportal.state.fl.us/Document.aspx?ID=28240&DocType=PDF (last visited Feb. 28, 2025).
[32] *Id.*
[33] *Id.*
[34] *Id.* Florida ranks third in the nation in the number of registered dealers, investment advisers, and their registered associated persons, and fourth in the number of registered branch offices.

Exempt Transactions

Certain securities transactions are exempt from the registration requirements of the Act.[35] Other than one exception,[36] the exemptions are self-executing and do not require any filing with OFR before being claimed.[37]

Any person who claims an exemption bears the burden of proving they are entitled to the exemption in any proceeding brought under the Act.[38] Further, although the Act's registration requirements do not apply to transactions that are explicitly exempt, such transactions are subject to the Act's anti-fraud provisions.[39]

Foreign Securities Exchanges

The Act's registration requirements do not apply to a nonissuer transaction in an outstanding security effected by or through a dealer registered or exempt from registration under the Act if all of the following are true:

- The issuer is a reporting issuer in a foreign jurisdiction identified by statute or by commission rule, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction; and
- The security is listed on the securities exchange designated by statute or by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.[40]

For purposes of this exemption, the Act designates Canada, together with its provinces and territories, as a foreign jurisdiction, and the Toronto Stock Exchange, Inc., as a securities exchange.[41] If, after an administrative hearing, OFR finds that revocation of a statutory designation is necessary or appropriate in furtherance of the public interest and for the protection of investors, OFR may revoke the designation of a securities exchange.[42]

Florida Invest Local Exemption

In 2024, the Florida Invest Local Exemption (FIL Exemption), based in part on Georgia's "Invest Georgia Exemption,"[43] was created under the Act.[44] The FIL Exemption exempts the offer and sale of securities from the Act's registration requirements when such securities are part of an intrastate offering that meets certain requirements.[45] An offering under the FIL exemption is limited to $500,000, and any one investor may not invest more than $10,000 unless the investor is accredited, a specified employee, or a 10% or more shareholder.[46]

Under the FIL Exemption, an offer or sale of security by an issuer is exempt from the Act's registration requirements if the following conditions are met:

- The issuer must be a for-profit business entity registered with the Department of State with its principal place of business in this state.[47]
- The issuer is not, before or as a result of the offering:
    - An investment company;
    - Subject to the reporting requirements of the 1934 Act;
    - A business entity with an undefined business plan, that lacks a business plan, that lacks a stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity; or
    - Disqualified pursuant to s. 517.0616, F.S.[48]

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[35] For a list of exempt transactions, *see* s. 517.061, F.S.
[36] S. 517.061(11), F.S., is the exception.
[37] S. 517.061, F.S.
[38] *Id.*
[39] *See* s. 517.301, F.S.
[40] S. 517.061(20), F.S.
[41] *Id.*
[42] *Id.*
[43] For more information on the Georgia Invest Local Exemption, *see* Georgia Secretary of State Securities Division, *Invest Georgia Exemption*, https://sos.ga.gov/sites/default/files/2023-05/IGE%20pamplet-web.pdf (last visited Mar. 1, 2025).
[44] *See* ch. 2024-168, Laws of Fla.
[45] *See* s. 517.0612, F.S.
[46] Ss. 517.0612(5), (6)(a), F.S.
[47] S. 517.0612(4), F.S.

- Further, the transaction must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the 1933 Act and SEC Rule 147 or SEC Rule 147A.[49]

An issuer making an offering under the FIL Exemption must file a notice of the offering and a copy of the disclosure statement with OFR, on a form prescribed by Commission rule, no less than 5 days before the offering commences.[50] If there are any material changes to the submitted information, the issuer must, within 3 days after such material change, file an amended notice with OFR.[51]

Disqualification of "Bad Actors" Under SEC Rule 506(d)

A registration exemption provided by the Act is not available to an issuer if the issuer would be disqualified under SEC Rule 506(d)[52] at the time the issuer makes an offer for the sale of a security.[53] Under the SEC Rule 506(d) "bad actor" disqualification, an offering is disqualified from relying on the exemptions in Rule 506(b) and 506(c) of Regulation D if the issuer or any other person covered by Rule 506(d) has a relevant criminal conviction, regulatory or court order, or other disqualifying event.[54]

The persons covered by SEC Rule 506(d) includes:

- The issuer, including its predecessors and affiliated issuers;
- Directors, general partners, and managing members of the issuer;
- Executive officers of the issuer, and other officers of the issuers that participate in the offering;
- 20 percent beneficial owners of the issuer, calculated on the basis of total voting power;
- Promoters connected to the issuer;
- For pooled investment fund issuers, the fund's investment manager and its principals; and
- Persons compensated for soliciting investors, including their directors, general partners and managing members.[55]

In 2024, industry members expressed concern that the inclusion of current s. 517.061(9), F.S., in the Act's disqualification provision would prohibit certain transactions with institutional investors in Florida, including offerings pursuant to Rule 144A under the Securities Act of 1933.[56]

Registration Requirements

Under the Act, OFR must record the registration of a security in OFR's register of securities if, upon examination of an application, it finds that all of the following requirements are met:

- The application is complete;
- The fee to register[57] has been paid;
- The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser;
- The terms of the sale of such securities would be fair, just, and equitable; and
- The enterprise or business of the issuer is not based upon unsound business principles.[58]

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[48] S. 517.0612(4)(a)-(d), F.S.
[49] S. 517.0612(3), F.S.
[50] S. 517.0612(10), F.S.
[51] *Id.*
[52] 17 C.F.R. § 230.506(d).
[53] S. 517.0616, F.S.
[54] U.S. Securities and Exchange Commission, *Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings and Related Disclosure Requirements*, Sep. 2013, https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/disqualification-felons-other-bad-actors-rule-506-offerings-related-disclosure-requirements#P9_40 (last visited Mar. 1, 2025).
[55] *Id*. *See also* 17 C.F.R. § 230.506(d)(1).
[56] Office of Financial Regulation, Agency Analysis of 2025 House Bill 379, at p. 3 (Feb. 12, 2025).
[57] An issuer filing an application under the Act must, at the time of filing, pay OFR a nonreturnable fee of $1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or $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. S. 517.081(8), F.S.
[58] S. 517.081(9)(a), F.S.

Requirements to Submit Fingerprints

The Act specifies certain information that the Commission or OFR may require for an applicant seeking registration,[59] and requires any direct owners, principals, or indirect owners of an applicant that are required to be reported on the application for registration to submit fingerprints for live-scan processing.[60]

In December 2023, the FBI communicated to OFR's liaison at DLE that the Act's fingerprinting requirements were insufficient for the FBI to continue providing fingerprint services to OFR.[61] The FBI cited Pub. L. 92-544, 86 Stat. 1115 (1972) and indicated the categories of individuals subject to the Act's fingerprinting requirements were unclear and overly broad and that additional definitions were needed.[62]

Exemption for Certain M&A Brokers from Registration

The Act provides an exemption from registration requirements for certain merger and acquisition (M&A) brokers.[63,64] The Act's exemption is based off of a model rule promulgated by the North American Securities Administrators Association's (NASAA).[65] The NASAA is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators.[66] Formed in 1919, NASAA is the oldest international organization devoted to investor protection.[67] NASAA advocates on behalf of state securities agencies in the United States that are responsible for capital formation and investor protection.[68] NASAA also coordinates training and education seminars for securities agency staff[69] and creates model rules for implementation amongst its members.[70]

NASAA adopted the NASAA Model Rule Exempting Certain M&A Brokers from Registration (Model Rule) in September of 2015.[71] The Model Rule was subsequently incorporated into the Act in July of 2016.[72] NASAA amended the Model Rule in May of 2024, to update the Model Rule in light of certain amendments that were made to subsection 15(b)(13) of the Securities and Exchange Act of 1934.[73]

Under the Act's exemption, prior to the completion of any securities transaction, an M&A broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that, after the transaction is completed, will be a control person of an eligible privately held company.[74]

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[59] *See* s. 517.12(6)(a)–(d), F.S.
[60] S. 517.12(6), F.S.
[61] *Supra*, note 54, at p. 5.
[62] *Id.*
[63] For purposes of this exemption, a broker is considered an M&A broker if he or she, or any person associated with him or her, engages in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company. S. 517.12(21)(a)4., F.S.
[64] *See* s. 517.12(21), F.S., for the Act's exemption for M&A brokers.
[65] *See* North American Securities Administrators Association, *Model Rule Exempting Certain Merger & Acquisition Brokers From Registration*, https://www.nasaa.org/wp-content/uploads/2024/05/Model-Rule-Exempting-Certain-Merger-and-Acquisition-Brokers-From-Registration-_5-6-2024.pdf (last visited Mar. 1, 2025).
[66] NASAA, *Welcome to NASAA*, https://www.nasaa.org/about/ (last visited Mar. 1, 2025).
[67] *Id.*
[68] *Id*.
[69] *Id.*
[70] *See, e.g.,* NASAA, *NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(B)(6)-CE)*, https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf (last visited Mar. 1, 2025).
[71] *Supra* note 63, at p. 1.
[72] Supra note 54, at p. 6. *See also*, ch. 2016-111, Laws of Fla.
[73] *Supra* note 54, at p. 6.
[74] S. 517.12(21)(b), F.S.

Currently, an M&A broker engaged in a transaction exempt from s. 517.061(7), F.S., is exempt from registration under the Act unless the M&A broker:

- Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;
- Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the SEC under the Securities Exchange Act of 1934, or with OFR under s. 517.07, F.S.; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934;
- Engages on behalf of any party in a transaction involving a public shell company;
- Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934;
- Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934;
- Is subject to a disqualification under the SEC Rule 506(d); or
- Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934.[75]

Securities Guaranty Fund

The Securities Guaranty Fund (Fund) was established for the purpose of providing monetary relief to victims of securities violations under the Act, specifically to those who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer.[76] The Fund is funded by a percentage of revenues received as assessment fees by OFR.[77]

Under the Act, a person must meet the following conditions to be eligible for payment from the Fund:

- The person holds an unsatisfied final judgement in which a wrongdoer was found to have violated ss. 517.07 or 517.301, F.S.;
- The person has applied any amounts recovered from the judgment debtor or from any other source to the damages awarded by the court or arbitrator; and
- The person is a natural person who was a resident of Florida, or is a business entity that was domiciled in Florida, at the time of the violation giving rise to the claim.[78]

Additionally, the Act requires an eligible person, or receiver on behalf of an eligible person, seeking payment from the Fund to file a written application with OFR on a form that the Commission may prescribe by rule.[79] The application must be filed with OFR within one year after the date of the final judgement, the date on which the restitution order became ripe for execution, or the date of any appealable decision thereon.

The application for payment from the Fund must contain, at a minimum, the following information:

- The eligible person's and, if applicable, the receiver's full names, addresses, and contact information.
- The person ordered to pay restitution.
- If the eligible person is a business entity, the eligible person's type and place of organization and, as applicable, a copy, as amended, of its articles of incorporation, articles of organization, trust agreement, or partnership agreement.
- Any final judgment and a copy thereof.
- Any restitution order pursuant to s. 517.191(3), F.S. and a copy thereof.
- An affidavit from the eligible person stating either one of the following:
    - That the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or

[75] S. 517.12(21)(c), F.S.
[76] S. 517.131(2), F.S.
[77] S. 517.131(1)(a), F.S. A maximum of 20% of all revenues received as assessment fees pursuant to ss. 517.12(9) and (10), F.S., for dealers and investment advisers (or s. 517.1201, F.S. for federal covered advisers), and a maximum of 10% of all revenues received as assessment fees pursuant to ss. 517.12(9) and (10), F.S., for associated persons must be part of the regular registration fee and must be transferred to the Fund.
[78] S. 517.131(3), F.S.
[79] S. 517.131(5), F.S.

applied in satisfaction of the final judgment and, by the eligible person's search, that the eligible person has not discovered any property or assets.
    - That the eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment remains unsatisfied.
- If the application is filed by the receiver, an affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is appointed; and the amount of any unsatisfied portion of any eligible person's order of restitution.
- The eligible person's residence or domicile at the time of the violation of s. 517.07, F.S. or 517.301, F.S. which resulted in the eligible person's monetary damages.
- The amount of any unsatisfied portion of the eligible person's final judgment.
- Whether an appeal or motion to vacate an arbitration award has been filed.[80]

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/HB 311	Barnaby	Brodeur	The 2024 legislation that made significant substantive changes throughout the Act.
2023	CS/CS/HB 253	Barnaby	Gruters	The 2023 legislation that made technical amendments throughout the Act.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Insurance & Banking Subcommittee	17 Y, 0 N, As CS	3/5/2025	Lloyd	Fletcher
THE CHANGES ADOPTED BY THE COMMITTEE:	• Revised the definition for the term "corporation;" and creates definitions for the terms "general partner," "limited partner," "partnership," and "shareholder." • Regarding dealers and investment advisers, clarified the individuals who must submit fingerprints for live-scan processing for registration applications. This clarification addressed concerns raised by the Florida Department of Law Enforcement (FDLE). • Regarding intermediaries, clarified the individuals who must submit fingerprints for live-scan processing for registration applications. This clarification addressed concerns raised by FDLE.			
Commerce Committee			Hamon	Fletcher

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

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[80] *Id.*

A bill to be entitled

An act relating to securities; amending s. 517.021, F.S.; providing and revising definitions; amending s. 517.061, F.S.; revising the circumstances under which securities transactions are exempt from registration requirements; amending s. 517.0612, F.S.; revising the filing requirements for securities issuers under the Florida Invest Local Exemption law; amending s. 517.0614, F.S.; revising circumstances under which securities offers and sales are not subject to integration with other offerings; amending s. 517.0616, F.S.; revising the registration exemptions that are available to specified issuers under certain circumstances; providing applicability of certain disqualification provisions under a specified Securities and Exchange Commission rule; amending s. 517.075, F.S.; making a technical change; amending s. 517.081, F.S.; revising the requirements for securities registration applications; amending s. 517.12, F.S.; revising the list of persons who must submit fingerprints for live-scan processing for registration applications; providing fees for fingerprint processing; providing and revising definitions; revising the written assurances requirements that merger and acquisition brokers must

receive from certain control persons under specified circumstances; revising the circumstances under which merger and acquisition brokers are not exempt from specified securities registration; amending s. 517.131, F.S.; providing a definition; revising the circumstances under which a person is eligible for payment from the Securities Guaranty Fund; revising the requirements for applications for payment from the fund; amending s. 517.301, F.S.; specifying a prohibition against certain misrepresentations in issuing and selling securities; amending ss. 517.211 and 517.315, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (6) through (9), (10), (11), (12), (13) through (17), (18), (19), (20) through (25), (26), and (27) of section 517.021, Florida Statutes, are renumbered as subsections (7) through (10), (12), (14), (15), (17) through (21), (25), (26), (28) through (33), (36), and (37), respectively, present subsections (11) and (15) are amended, and new subsections (6), (11), (13), (16), (22), (23), (24), (27), (34), and (35) are 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:

(6) "Branch manager" means a natural person who administers or supervises the affairs or operations of a branch office.

(11) "Corporation" means a corporation, domestic corporation, foreign corporation, nonprofit corporation, or foreign nonprofit corporation, as those terms are defined in s. 607.01401.

(13) "Director" means a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing or exercising control over its officers.

(14) ~~(11)~~ "Federal covered adviser" means a person that is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term does not include any person that is excluded from the definition of investment adviser under subparagraphs (20)(b)1.-7. ~~(16)(b)1.-7.~~ and 9.

(16) "General partner" means a co-owner or manager of a partnership who has unlimited liability for the partnership's debts. The term includes a general partner as defined in s. 620.1102.

(19) ~~(15)~~ "Intermediary" means a ~~natural~~ person that ~~residing in this state or a corporation, trust, partnership,~~

~~limited liability company, association, or other legal entity registered with the Secretary of State to do business in this state, which~~ facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state.

(22) "Limited liability company" means a limited liability company or foreign limited liability company, as those terms are defined in s. 605.0102.

(23) "Limited liability company manager" or "limited liability managing member" means a person that is responsible alone or in concert with others for performing the management functions of a limited liability company.

(24) "Limited partner" means a co-owner of a partnership who has limited liability for the partnership's debts. The term includes a limited partner as defined in s. 620.1102.

(27) "Partnership" means two or more persons carrying on as co-owners of a business. The term includes a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership, as those terms are defined in s. 620.1102.

(34) "Shareholder" means a person that owns at least one share of a corporation and whose ownership is reflected in the records of the corporation.

(35) "Trust" has the same meaning as in s. 731.201.

Section 2. Subsections (7) and (9), paragraph (f) of

subsection (11), and subsections (18), (19), and (20) of section 517.061, Florida Statutes, are amended to read:

517.061 Exempt transactions.—Except as otherwise provided in subsection (11), the exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office before being claimed. Any person who claims entitlement to an exemption under this section bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to s. 517.301:

(7) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(22) ~~s. 517.12(21)~~.

(9) The offer or sale of securities to:

(a) A bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

(b) A savings and loan association, building and loan association, cooperative bank, homestead association, or credit union, which is supervised and examined by a state or federal

authority having supervision over any such institution.

(c) A federal covered adviser, investment adviser registered pursuant to the laws of a state, exempt reporting adviser or private fund adviser as those terms are defined in s. 517.12(23)(a)2. and 3., respectively, investment adviser relying on the exemption from registering with the Securities and Exchange Commission under s. 203(l) or (m) of the Investment Advisers Act of 1940, as amended, business development company as defined in s. 2(a)(48) of the Investment Company Act of 1940, as amended, or business development company as defined in s. 202(a)(22) of the Investment Advisers Act of 1940, as amended.

(d) A small business investment company licensed by the Small Business Administration under s. 301(c) of the Small Business Investment Act of 1958, as amended, or rural business investment company as defined in s. 384A of the Consolidated Farm and Rural Development Act.

(e) A plan established and maintained by a state, a political subdivision thereof, or any agency or instrumentality of a state or a political subdivision, for the benefit of its employees, if such plan has total assets in excess of $5 million, an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as described in s. 3(21) of such act, which is a bank, savings and loan association, insurance company, or federal covered adviser, or

if the employee benefit plan has total assets in excess of $5 million or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

(f) An organization described in s. 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million.

(g) A trust, with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Rule 506(b)(2)(ii), 17 C.F.R. s. 230.506(b)(2)(ii), as amended.

(h) An entity of a type not listed in paragraphs (a)-(g) or paragraph (j) which owns investments as defined in Securities and Exchange Commission Rule 2a51-1(b), 17 C.F.R s. 270.2a51-1(b), as amended, in excess of $5 million and is not formed for the specific purpose of acquiring the securities offered.

(i) A family office as defined in Securities and Exchange Commission Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, 17 C.F.R. s. 275.202(a)(11)(G)-1, as amended, provided that:

1. The family office has assets under management in excess of $5 million;

2. The family office is not formed for the specific

purpose of acquiring the securities offered; and

3. The prospective investment of the family office is directed by a person who has knowledge and experience in financial and business matters that the family office is capable of evaluating the merits and risks of the prospective investment.

(j) An entity in which all of the equity owners are described in paragraphs (a)-(i).

(11) Offers or sales of securities by an issuer in a transaction that meets all of the following conditions:

(f) The issuer files with the office a notice of transaction on a form prescribed by commission rule, an irrevocable written~~, a~~ consent to service of civil process similar to that provided in s. 517.101, and a copy of the general announcement within 15 days after the first sale is made in this state. The commission may adopt by rule procedures for filing documents by electronic means.

(18) Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided that, at the time of the transaction, the following conditions in paragraphs (a), (b), and (c) and either paragraph (d) or paragraph (e) are met:

(a) The issuer of the security is actually engaged in

business and is not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(b) The security is sold at a price reasonably related to the current market price of the security.

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security.

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or a document filed with and publicly viewable through the Securities and Exchange Commission electronic data gathering and retrieval system and contains:

1. A description of the business and operations of the issuer.~~;~~

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile.~~;~~

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance

sheet.~~; and~~

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.

(e)1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended;

2. The class of security is quoted, offered, purchased, or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. s. 242.301, as amended, and the issuer of the security has made current information publicly available in accordance with Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s. 240.15c2-11, as amended;

3. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended;

4. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

5. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a

reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(19) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17) ~~s. 517.12(16)~~.

(20)(a) A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if, at the time of the transaction, all of the following conditions are met ~~true~~:

1.~~(a)~~ The issuer is a reporting issuer in a foreign jurisdiction ~~designated by this subsection or by commission rule~~, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction.

2.~~(b)~~ The security is listed on a foreign securities exchange or foreign securities market ~~the securities exchange~~ designated ~~by this subsection or~~ by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.

(b) The commission shall consider all of the following in designating a foreign securities exchange or foreign securities market for purposes of this subsection:

1. Organization under foreign law.

2. Association with a generally recognized community of

dealers, financial institutions, or other professional intermediaries with an established operating history.

3. Oversight by a governmental or self-regulatory body.

4. Oversight standards set by general law.

5. Reporting of securities transactions on a regular basis to a governmental or self-regulatory body.

6. A system for exchange of price quotations through common communications media.

7. An organized clearance and settlement system.

8. Listing in Securities and Exchange Commission Regulation S Rule 902, 17 C.F.R. s. 230.902, as amended.

~~For purposes of this subsection, Canada, together with its provinces and territories, is designated as a foreign jurisdiction, and Toronto Stock Exchange, Inc., is designated as a securities exchange.~~ If, after an administrative hearing in compliance with ss. 120.569 and 120.57, the office finds that revocation is necessary or appropriate in furtherance of the public interest and for the protection of investors, it may revoke the designation of a foreign securities exchange or foreign securities market ~~under this subsection~~.

Section 3. Subsection (10) of section 517.0612, Florida Statutes, is amended to read:

517.0612 Florida Invest Local Exemption.—

(10) The issuer must file with the office a notice of

transaction on a form prescribed by commission rule, an irrevocable written consent to service of civil process similar to that provided in s. 517.101, and a copy of the disclosure statement described in subsection (8) at least ~~the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than~~ 5 business days before the offering commences~~, along with the disclosure statement described in subsection (8)~~. If there are any material changes to the information previously submitted, the issuer must, within 3 business days after such material change, file an amended notice.

Section 4. Paragraph (b) of subsection (2) of section 517.0614, Florida Statutes, is amended to read:

517.0614 Integration of offerings.—

(2) The integration analysis required by subsection (1) is not required if any of the following nonexclusive safe harbors apply:

(b) Offers and sales made in compliance with any of the following provisions are not subject to integration with other offerings:

1. Section 517.051 or s. 517.061, except s. 517.061(10) or (11) ~~s. 517.061(9), (10), or (11)~~.

2. Section 517.0611 or s. 517.0612.

Section 5. Section 517.0616, Florida Statutes, is amended to read:

517.0616 Disqualification.—

(1) A registration exemption under s. 517.061(11) ~~s. 517.061(9), (10), and (11)~~, s. 517.0611, or s. 517.0612 is not available to an issuer if, at the time the issuer makes an offer for the sale of a security, the issuer; a predecessor of the issuer; an affiliated issuer; a director, executive officer, or other officer of the issuer participating in the offering; a general partner or managing member of the issuer; a beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; or a promoter connected with the issuer in any capacity at the time of such sale ~~that~~ would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended~~, at the time the issuer makes an offer for the sale of a security~~.

(2) The disqualification under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended, does not apply to any other person or entity listed in such rule.

Section 6. Subsection (2) of section 517.075, Florida Statutes, is amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(2) Any disclosure required by subsection (1) must include:

(a) The name of such person, affiliate, or government with which the issuer does business and the nature of that business.~~;~~

(b) A statement that the information is accurate as of the date the securities were effective with the ~~United States~~ Securities and Exchange Commission or with the office, whichever date is later.~~; and~~

(c) A statement that current information concerning the issuer's business dealings with the government of Cuba or with any person or affiliate located in Cuba may be obtained from the office, which statement must include the address and phone number of the office.

Section 7. Subsection (5) and paragraph (a) of subsection (9) of section 517.081, Florida Statutes, are amended to read:

517.081 Registration procedure.—

(5) ~~All of~~ The following issuers are not eligible to submit a simplified offering circular:

(a) An issuer that is subject to any of the disqualifications described in Securities and Exchange Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this paragraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or a person owning at least 10 percent of the ownership interests of the issuer; a promoter or selling agent

of the securities to be offered; or any officer, director, partner, or manager or managing member of such selling agent.

(b) An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified business entity or entities.

(c) An issuer of offerings in which the specific business or properties cannot be described.

(d) An issuer that the office determines is ineligible because the simplified circular does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(9)(a) The office shall record the registration of a security in the register of securities if, upon examination of an application, it finds that all of the following requirements are met:

1. The application is complete.

2. The fee imposed in subsection (8) has been paid.

3. The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser.

4. The terms of the sale of such securities would be fair, just, and equitable.

~~5. The enterprise or business of the issuer is not based upon unsound business principles.~~

Section 8. Subsections (7) through (22) of section 517.12,

Florida Statutes, are renumbered as subsections (8) through (23), respectively, subsection (6), present subsection (10), paragraph (b) of present subsection (14), and present subsections (19), (20), and (21) are amended, and a new subsection (7) is added to that section, to read:

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

(6) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. ~~Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of~~

~~Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14), submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.~~ The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's full name, and any other names by which the applicant or person may have been known, and the applicant's or person's age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to the applicant's or person's character, reputation, and financial responsibility.

(7)(a)1. The following natural persons must submit a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized under s. 943.053(13) for live-scan processing in accordance with rules adopted by the commission.

a. A natural person filing with the office an application for registration as an associated person.

b. A natural person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, or director for a dealer or investment adviser applicant.

c. A natural person who is a 5 percent or more owner of a dealer or investment adviser applicant.

d. With respect to each 5 percent or more owner of a dealer or investment adviser applicant that is a corporation, partnership, trust, or limited liability company, each natural person who is a 25 percent or more owner or trustee of such

entity, and each natural person who is a 25 percent or more owner or trustee at each level of the chain of ownership up to, but not including, an entity subject to s. 12 or s. 15(d) of the Securities Exchange Act of 1934, as amended.

2. For purposes of this subsection, the term "owner" means:

a. A shareholder that owns a percentage of a class of voting securities of a dealer or investment adviser applicant, and includes any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, the percentage of a class of a voting security of the dealer or investment adviser applicant specified in sub-subparagraph 1.c. or sub-subparagraph 1.d. For purposes of this sub-subparagraph, a person beneficially owns any securities:

(I) Owned by the shareholder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law sharing the same residence; or

(II) That the shareholder has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the securities.

b. A general partner of a partnership, and a limited partner of a partnership who has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant.

c. A trustee of a trust that owns a percentage of a class of a voting security of a dealer or investment adviser applicant, or that has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant.

d. A member of a limited liability company who has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant, and all limited liability company managers of a dealer or investment adviser applicant.

(b) A vendor, entity, or agency authorized under s. 943.053(13) to submit fingerprints electronically to the Department of Law Enforcement shall submit the fingerprints to the department for state processing, and the department shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(c) Fees for state and federal fingerprint processing shall be borne by the person subject to the criminal history record check. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).

(d) The office shall review the results of the state and federal criminal history record checks and determine whether the applicant is disqualified from registration. The commission may waive by rule the requirement that the persons listed in this subsection submit fingerprints or the requirement that such

fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.

(11)(a) ~~(10)(a)~~ If the office finds that the applicant has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (10)(a) ~~(9)(a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (10)(a) ~~(9)(a)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office

during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (10)(a) ~~(9)(a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

(15) ~~(14)~~

(b) In lieu of filing with the office the applications specified in subsection (5), the fees required by subsection (10) ~~(9)~~, the renewals required by subsection (11) ~~(10)~~, and the termination notices required by subsection (12) ~~(11)~~, the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(20) ~~(19)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the

commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of organization and amendments to the articles and a copy of the company's operating agreement as may be amended; or

c. A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. ~~Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-~~

~~scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.~~ The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's full name and any other names by which the applicant or person may have been known and the applicant's or person's age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated business and any injunction or

administrative order by a state or federal agency regulating banking, insurance, finance, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c)1. The following natural persons must submit a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized under s. 943.053(13) for live-scan processing in accordance with rules adopted by the commission:

a. A natural person filing with the office an application for registration as an intermediary.

b. A natural person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, or director for an intermediary applicant.

c. A natural person who is a 5 percent or more owner of an intermediary applicant.

d. With respect to each 5 percent or more owner of an intermediary applicant that is a corporation, partnership, trust, or limited liability company, each natural person who is a 25 percent or more owner or trustee of such entity, and each

natural person who is a 25 percent or more owner or trustee at each level of the chain of ownership up to, but not including, an entity subject to s. 12 or s. 15(d) of the Securities Exchange Act of 1934, as amended.

2. For purposes of this subsection, the term "owner" means:

a. A shareholder who owns a percentage of a class of voting securities of an intermediary applicant, and includes any person who owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, the percentage of a class of a voting security of the intermediary applicant specified in sub-subparagraph 1.c. or sub-subparagraph 1.d. For purposes of this sub-subparagraph, a person beneficially owns any securities:

(I) Owned by the shareholder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law sharing the same residence; or

(II) That the shareholder has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the securities.

b. A general partner of a partnership, and a limited partner of a partnership who has the right to receive upon dissolution, or has contributed, a percentage of the capital of an intermediary applicant.

c. A trustee of a trust that owns a percentage of a class of a voting security of an intermediary applicant, or that has the right to receive upon dissolution, or has contributed, a percentage of the capital of an intermediary applicant.

d. A member of a limited liability company who has the right to receive upon dissolution, or has contributed, a percentage of the capital of an intermediary applicant, and all limited liability company managers of an intermediary applicant.

(d) The vendor, entity, or agency authorized under s. 943.053(13) to submit fingerprints electronically to the Department of Law Enforcement shall submit the fingerprints to the department for state processing, and the department shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(e) Fees for state and federal fingerprint processing shall be borne by the person subject to the criminal history record check. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).

(f) The office shall review the results of the state and federal criminal history record checks and determine whether the applicant is disqualified from registration. The commission may waive by rule the requirement that applicants, including any natural persons listed in sub-subparagraphs (c)1.a.-d., submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal

Bureau of Investigation.

(g) ~~(e)~~ The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(h) ~~(d)~~ An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests of the intermediary is subject to this requirement.

(i) ~~(e)~~ If the office finds that the applicant has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires

may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(21)(20) The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, with regard to the sale of a security as defined in s. 517.021(33)(g) ~~s. 517.021(25)(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 constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(22)(a)~~(21)(a)~~ As used in this subsection, the term:

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

2. "Business combination related shell company" means a shell company that is formed by an entity that is not a shell company solely for the purpose of:

a. Changing the corporate domicile of the entity solely within the United States; or

b. Completing a business combination transaction, as defined in 17 C.F.R. s. 230.165(f), among one or more entities other than the company itself, none of which is a shell company.

3.~~2.~~ "Control person" means a person ~~an individual or entity~~ that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of a company if, upon completion of a transaction, the buyer or group of buyers ~~with respect to a particular company, the person~~:

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

a.~~b.~~ Has the power to vote 25 ~~20~~ percent or more of a class of voting securities or has the power to sell or direct the sale of 25 ~~20~~ percent or more of a class of voting securities; or

b.~~c.~~ In the case of a partnership or limited liability company, may receive upon dissolution, or has contributed, 25 ~~20~~ percent or more of the capital.

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

a. The company does not have any class of securities which is registered, or which is required to be registered, with the

~~United States~~ Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., as amended, or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d), as amended.

b. In the fiscal year immediately preceding the fiscal year during which the merger and acquisition broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, has earnings before interest, taxes, depreciation, and amortization of less than $25 million or has gross revenues of less than $250 million. On July 1, 2021, and every 5 years thereafter, each dollar amount in this sub-subparagraph shall be adjusted by dividing the annual value of the Employment Cost Index for wages and salaries for private industry workers, or any successor index, as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made, by the annual value of such index or successor index for the calendar year ending December 31, 2020 ~~2012~~, and multiplying such dollar amount by the quotient obtained. Each dollar amount determined under this sub-subparagraph shall be rounded to the nearest multiple of $100,000. The commission may by rule modify the dollar figures

if the commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.

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

6.~~5.~~ "~~Public~~ Shell company" means a company that at the time of a transaction with an eligible privately held company:

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

a.~~b.~~ Has nominal or no operations.~~; and~~

b.~~c.~~ Has nominal assets or no assets, assets consisting solely of cash and cash equivalents, or assets consisting of any

amount of cash and cash equivalents and nominal other assets.

(b) Prior to the completion of any securities transaction described in s. 517.061(7), a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

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

2. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company, and active in the management of the assets of the eligible privately held company, by engaging in acts and activities that include, but are not limited to, the following:

a. Electing executive officers.

b. Approving the annual budget.

c. Serving as an executive or other executive manager.

d. Carrying out such other activities as the commission may by rule determine to be in the public interest.

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

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(7) is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of

any class of securities which is registered, or which is required to be registered, with the ~~United States~~ Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., as amended, or with the office under s. 517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d), as amended;

3. Engages on behalf of any party in a transaction involving a ~~public~~ shell company, other than a business combination related shell company;

4. Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company;

5. Assists any party to obtain financing from an unaffiliated third party without:

a. Complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T under 12 C.F.R. ss. 220 et seq., as amended; and

b. Disclosing any compensation in writing to the party;

6. Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation;

7. Facilitates a transaction with a group of buyers formed

with the assistance of the Merger and Acquisition Broker to acquire the eligible privately held company;

8. Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers;

9. Binds a party to a transfer of ownership of an eligible privately held company; or

10. Is subject to, or an officer, director, member, manager, partner, or employee of the broker is subject to, the following disciplinary actions:

a. Has been barred from association with a broker or dealer by the Securities and Exchange Commission, any state, or any self-regulatory organization; or

b. Is suspended from association with a broker or dealer.

~~4. Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4);~~

~~5. Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(39);~~

~~6. Is subject to a disqualification under the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or~~

~~7. Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s.~~

~~78o(b)(4)(H).~~

Section 9. Subsection (1), paragraph (a) of subsection (2), and subsections (3) and (5) of section 517.131, Florida Statutes, are amended to read:

517.131 Securities Guaranty Fund.—

(1) As used in this section, the term:

(a) "Final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(b) "Restitution order" means a court order awarding a specified monetary amount to a named aggrieved person for a violation of s. 517.07 or s. 517.301 to be paid by a named violator.

(2)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ for associated persons must be part of the regular registration license fee and must be transferred to or deposited in the

Securities Guaranty Fund.

(3) A person is eligible for payment from the Securities Guaranty Fund if the person:

(a)1. Is a judgment creditor in ~~Holds~~ an unsatisfied final judgment or a named beneficiary or victim in an unsatisfied restitution order entered on or after October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301;

2. Has applied any amount recovered from the judgment debtor, a person ordered to pay restitution, or any other source to the damages awarded in a final judgment or restitution order ~~by the court or arbitrator~~; and

3. Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation of s. 517.07 or s. 517.301; or

(b) Is a receiver appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution under s. 517.191(3) as a result of a violation of s. 517.07 or s. 517.301 which has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (a).

If a person holds an unsatisfied final judgment or restitution order entered before October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301, such person's claim for payment from the Securities Guaranty Fund shall be

governed by the terms of this section and s. 517.141 which were effective on the date of such final judgment or restitution order.

(5) An eligible person, or a receiver on behalf of the eligible person, seeking payment from the Securities Guaranty Fund must file with the office a written application on a form that the commission may prescribe by rule. The commission may adopt by rule procedures for filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section. The application must be filed with the office within 1 year after the date of the final judgment, the date on which a restitution order has been ripe for execution, or the date of any appellate decision thereon, and, at minimum, must contain all of the following information:

(a) The eligible person's and, if applicable, the receiver's full names, addresses, and contact information.

(b) The name of the judgment debtor or person ordered to pay restitution.

(c) If the eligible person is a business entity, the eligible person's type and place of organization and, as applicable, a copy, as amended, of its articles of incorporation, articles of organization, trust agreement, or partnership agreement.

(d) A copy of any final judgment or ~~and a copy thereof.~~

~~(e) Any~~ restitution order ~~pursuant to s. 517.191(3), and a copy thereof~~.

(e)~~(f)~~ An affidavit from the eligible person stating either one of the following:

1. That the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor or person ordered to pay restitution possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment or restitution order and, by the eligible person's search, that the eligible person has not discovered any property or assets.

2. That the eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment or restitution order remains unsatisfied.

(f)~~(g)~~ If the application is filed by the receiver, an affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is appointed; and the amount of any unsatisfied portion of any eligible person's restitution order ~~of restitution~~.

(g)~~(h)~~ The eligible person's residence or domicile at the time of the violation of s. 517.07 or s. 517.301 which resulted in the eligible person's monetary damages.

(h) ~~(i)~~ The amount of any unsatisfied portion of the eligible person's final judgment or restitution order.

(i) ~~(j)~~ Whether an appeal ~~or motion to vacate an arbitration award~~ has been filed.

Section 10. Subsection (3) of section 517.301, Florida Statutes, is amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.—

(3) It is unlawful for a person in issuing or selling a security within this state, including a security exempted under s. 517.051 and including a transaction exempted under s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security or person ~~business entity~~ has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

Section 11. Subsection (1) of section 517.211, Florida Statutes, is amended to read:

517.211 Private remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (9), (11), (13), (16), or (18) ~~s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17)~~ may be rescinded at the election of the purchaser; however, a sale made in violation of the provisions of s. 517.1202(3) relating to a

renewal of a branch office notification or in violation of the provisions of s. 517.12(13) ~~s. 517.12(12)~~ relating to filing a change of address amendment is not subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days after receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 12. Subsection (2) of section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(2) After the transfer required in subsection (1), the office shall transfer the $50 assessment fee collected from each associated person under s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ and 30.44 percent of the $100 assessment fee paid by dealers and investment advisers for each office in the state under s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ to the Regulatory Trust Fund.

Section 13. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 379 by Rep. Barnaby
Securities

AMENDMENT SUMMARY
April 7, 2025

Amendment 1 by Rep. Barnaby (strike-all):

- Aligns the House bill with the Senate bill by:
  - Removing nonprofit corporations and foreign nonprofit corporations from the definition of "corporation;"
  - Removing the registration exemption for the offer or sale of securities to a homestead association;
  - Providing that the Financial Services Commission, when waiving the requirement for certain persons to submit fingerprints, may consider the rules and regulations of the Securities and Exchange Commission and the Financial Industry Regulatory Authority, and the model rules and acts of the North American Securities Administrators Association, Inc.; and
  - Allowing a dealer or investment adviser to extend the delay of a transaction for up to 30, rather than 10, additional days if surrounding facts and circumstances support a reasonable belief that financial exploitation of a specified adult has occurred.
- Moves the definition of "shareholder" to the specific provisions relating to requirements for certain persons to submit fingerprints.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Barnaby offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (6) through (9), (10), (11), (12), (13) through (17), (18), (19), (20) through (25), (26), and (27) of section 517.021, Florida Statutes, are redesignated as subsections (7) through (10), (12), (14), (15), (17) through (21), (25), (26), (28) through (33), (36), and (37), respectively, new subsections (6), (11), (13), (16), (22), (23), (24), (27), (34), and (35) are added to that section, and present subsections (11) and (15) of that section are amended, to read:

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

(6) "Branch manager" means a natural person who administers or supervises the affairs or operations of a branch office.

(11) "Corporation" has the same meaning as "corporation," "domestic corporation," or "foreign corporation" in s. 607.01401.

(13) "Director" means a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing or exercising control over its officers.

(14) ~~(11)~~ "Federal covered adviser" means a person that is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term does not include any person that is excluded from the definition of investment adviser under subparagraphs (20)(b)1.-7. ~~(16)(b)1.-7.~~ and 9.

(16) "General partner" has the same meaning as in s. 620.1102 and includes a co-owner or manager of a partnership who has unlimited liability for the partnership's debts.

(19) ~~(15)~~ "Intermediary" means a ~~natural~~ person that ~~residing in this state or a corporation, trust, partnership, limited liability company, association, or other legal entity~~

~~registered with the Secretary of State to do business in this state, which~~ facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state.

(22) "Limited liability company" has the same meaning as in s. 605.0102, including a "foreign limited liability company," as that term is defined in that section.

(23) "Limited liability company manager" or "limited liability managing member" means a person who is responsible alone, or in concert with others, for performing the management functions of a limited liability company.

(24) "Limited partner" has the same meaning as in s. 620.1102 and includes a co-owner of a partnership who has limited liability for the partnership's debts.

(27) "Partnership" means two or more persons who are the co-owners of a business, including those operating as a "foreign limited liability limited partnership," a "foreign limited partnership," a "limited liability limited partnership," or a "limited partnership" as those terms are defined in s. 620.1102.

(34) "Trust" has the same meaning as in s. 731.201.

Section 2. Subsections (7) and (9), paragraph (f) of subsection (11), and subsections (18), (19), and (20) of section 517.061, Florida Statutes, are amended to read:

517.061 Exempt transactions.—Except as otherwise provided in subsection (11), the exemptions provided herein from the

registration requirements of s. 517.07 are self-executing and do not require any filing with the office before being claimed. Any person who claims entitlement to an exemption under this section bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to s. 517.301:

(7) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(22) ~~s. 517.12(21)~~.

(9) The offer or sale of securities to:

(a) A bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

(b) A savings and loan association, building and loan association, cooperative bank, or credit union, which is supervised and examined by a state or federal authority having supervision over any such institution.

(c) A federal covered adviser, investment adviser registered pursuant to the laws of a state, exempt reporting adviser or private fund adviser as those terms are defined in s.

517.12(23)(a)2. and 3., respectively, investment adviser relying on the exemption from registering with the Securities and Exchange Commission under s. 203(l) or (m) of the Investment Advisers Act of 1940, as amended, business development company as defined in s. 2(a)(48) of the Investment Company Act of 1940, as amended, or business development company as defined in s. 202(a)(22) of the Investment Advisers Act of 1940, as amended.

(d) A small business investment company licensed by the Small Business Administration under s. 301(c) of the Small Business Investment Act of 1958, as amended, or rural business investment company as defined in s. 384A of the Consolidated Farm and Rural Development Act.

(e) A plan established and maintained by a state, a political subdivision thereof, or any agency or instrumentality of a state or a political subdivision, for the benefit of its employees, if such plan has total assets in excess of $5 million, an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as described in s. 3(21) of such act, which is a bank, savings and loan association, insurance company, or federal covered adviser, or if the employee benefit plan has total assets in excess of $5 million or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

(f) An organization described in s. 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million.

(g) A trust, with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Rule 506(b)(2)(ii), 17 C.F.R. s. 230.506(b)(2)(ii), as amended.

(h) An entity of a type not listed in paragraphs (a)-(g) or paragraph (j) which owns investments as defined in Securities and Exchange Commission Rule 2a51-1(b), 17 C.F.R. s. 270.2a51-1(b), as amended, in excess of $5 million and is not formed for the specific purpose of acquiring the securities offered.

(i) A family office as defined in Securities and Exchange Commission Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, 17 C.F.R. s. 275.202(a)(11)(G)-1, as amended, provided that:

1. The family office has assets under management in excess of $5 million;

2. The family office is not formed for the specific purpose of acquiring the securities offered; and

3. The prospective investment of the family office is directed by a person who has knowledge and experience in

financial and business matters that the family office is capable of evaluating the merits and risks of the prospective investment.

(j) An entity in which all of the equity owners are described in paragraphs (a)-(i).

(11) Offers or sales of securities by an issuer in a transaction that meets all of the following conditions:

(f) The issuer files with the office a notice of transaction on a form prescribed by commission rule, an irrevocable written~~, a~~ consent to service of civil process in accordance with s. 517.101, and a copy of the general announcement within 15 days after the first sale is made in this state. The commission may adopt by rule procedures for filing documents by electronic means.

(18) Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided that, at the time of the transaction, the following conditions in paragraphs (a), (b), and (c) and either paragraph (d) or paragraph (e) are met:

(a) The issuer of the security is actually engaged in business and is not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger

or combination of the business with, or an acquisition of, an unidentified person.

(b) The security is sold at a price reasonably related to the current market price of the security.

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security.

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or a document filed with and publicly viewable through the Securities and Exchange Commission electronic data gathering and retrieval system and contains:

1. A description of the business and operations of the issuer.~~;~~

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile.~~;~~

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.~~; and~~

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of

existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.

(e)1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended;

2. The class of security is quoted, offered, purchased, or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. s. 242.301, as amended, and the issuer of the security has made current information publicly available in accordance with Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s. 240.15c2-11, as amended;

3. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended;

4. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

5. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(19) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17) ~~s. 517.12(16)~~.

(20)(a) A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if, at the time of the transaction, all of the following conditions are met ~~true~~:

1.~~(a)~~ The issuer is a reporting issuer in a foreign jurisdiction ~~designated by this subsection or by commission rule~~, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction.

2.~~(b)~~ The security is listed on a foreign securities exchange or foreign securities market ~~the securities exchange~~ designated ~~by this subsection or~~ by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.

(b) The commission shall consider all of the following in designating a foreign securities exchange or foreign securities market for purposes of this subsection:

1. Organization under foreign law.

2. Association with a community of dealers, financial institutions, or other professional intermediaries with an established operating history.

3. Oversight by a governmental or self-regulatory body.

4. Oversight standards set by general law.

5. Reporting of securities transactions on a regular basis to a governmental or self-regulatory body.

6. A system for exchange of price quotations through common communications media.

7. An organized clearance and settlement system.

8. Listing in Securities and Exchange Commission Regulation S Rule 902, 17 C.F.R. s. 230.902, as amended.

~~For purposes of this subsection, Canada, together with its provinces and territories, is designated as a foreign jurisdiction, and Toronto Stock Exchange, Inc., is designated as a securities exchange.~~ If, after an administrative hearing in compliance with ss. 120.569 and 120.57, the office finds that revocation is necessary or appropriate in furtherance of the public interest and for the protection of investors, it may revoke the designation of a foreign securities exchange or foreign securities market ~~under this subsection~~.

Section 3. Subsection (10) of section 517.0612, Florida Statutes, is amended to read:

517.0612 Florida Invest Local Exemption.—

(10) The issuer must file with the office a notice of transaction on a form prescribed by commission rule, an irrevocable written consent to service of civil process in accordance with s. 517.101, and a copy of the disclosure

statement described in subsection (8) at least ~~the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than~~ 5 business days before the offering commences~~, along with the disclosure statement described in subsection (8)~~. If there are any material changes to the information previously submitted, the issuer must, within 3 business days after such material change, file an amended notice.

Section 4. Paragraph (b) of subsection (2) of section 517.0614, Florida Statutes, is amended to read:

517.0614 Integration of offerings.—

(2) The integration analysis required by subsection (1) is not required if any of the following nonexclusive safe harbors apply:

(b) Offers and sales made in compliance with any of the following provisions are not subject to integration with other offerings:

1. Section 517.051 or s. 517.061, except s. 517.061(10) or (11) ~~s. 517.061(9), (10), or (11)~~.

2. Section 517.0611 or s. 517.0612.

Section 5. Section 517.0616, Florida Statutes, is amended to read:

517.0616 Disqualification.—

(1) A registration exemption under s. 517.061(11) ~~s. 517.061(9), (10), and (11)~~, s. 517.0611, or s. 517.0612 is not

available to an issuer if, at the time the issuer makes an offer for the sale of a security, the issuer; a predecessor of the issuer; an affiliated issuer; a director, executive officer, or other officer of the issuer participating in the offering; a general partner or managing member of the issuer; a beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; or a promoter connected with the issuer in any capacity at the time of such sale ~~that~~ would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended~~, at the time the issuer makes an offer for the sale of a security~~.

(2) The disqualification under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended, does not apply to any other person or entity listed in such rule.

Section 6. Subsection (2) of section 517.075, Florida Statutes, is amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(2) Any disclosure required by subsection (1) must include:

(a) The name of such person, affiliate, or government with which the issuer does business and the nature of that business.~~;~~

(b) A statement that the information is accurate as of the date the securities were effective with the ~~United States~~ Securities and Exchange Commission or with the office, whichever date is later.~~; and~~

(c) A statement that current information concerning the issuer's business dealings with the government of Cuba or with any person or affiliate located in Cuba may be obtained from the office, which statement must include the address and phone number of the office.

Section 7. Subsection (5) and paragraph (a) of subsection (9) of section 517.081, Florida Statutes, are amended to read:

517.081 Registration procedure.—

(5) ~~All of~~ The following issuers are not eligible to submit a simplified offering circular:

(a) An issuer that is subject to any of the disqualifications described in Securities and Exchange Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this paragraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or a person owning at least 10 percent of the ownership interests of the issuer; a promoter or selling agent of the securities to be offered; or any officer, director, partner, or manager or managing member of such selling agent.

(b) An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified business entity or entities.

(c) An issuer of offerings in which the specific business or properties cannot be described.

(d) An issuer that the office determines is ineligible because the simplified circular does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(9)(a) The office shall record the registration of a security in the register of securities if, upon examination of an application, it finds that all of the following requirements are met:

1. The application is complete.

2. The fee imposed in subsection (8) has been paid.

3. The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser.

4. The terms of the sale of such securities would be fair, just, and equitable.

~~5. The enterprise or business of the issuer is not based upon unsound business principles.~~

Section 8. Present subsections (7) through (22) of section 517.12, Florida Statutes, are redesignated as subsections (8) through (23), respectively, a new subsection (7) is added to

that section, and subsection (6), present subsection (10), paragraph (b) of present subsection (14), and present subsections (19), (20), and (21) of that section are amended, to read:

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

(6) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. ~~Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state~~

~~and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14), submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.~~ The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's full name, and any other names by which the applicant or person may have been known, and the applicant's or person's age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to the applicant's or person's character, reputation, and financial responsibility.

(7)(a)1. The following natural persons shall submit a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized under s. 943.053(13) for live-scan processing in accordance with rules adopted by the commission:

a. A natural person who files an application with the office for registration as an associated person.

b. A natural person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, or director for a dealer or investment adviser applicant.

c. A natural person who owns at least 5 percent of a dealer or investment adviser applicant.

d. With respect to each owner who owns at least 5 percent of a dealer or investment adviser applicant which is a corporation, partnership, trust, or limited liability company, each natural person who is a 25 percent or more owner or trustee

of such entity, and each natural person who is a 25 percent or more owner or trustee at each level up the chain of ownership up to, but not including, an entity subject to s. 12 or s. 15(d) of the Securities Exchange Act of 1934, as amended.

2. For purposes of this subsection, the term "owner" means:

a. A shareholder who owns a percentage of a class of voting securities of a dealer or an investment adviser applicant, and includes any person who owns, beneficially owns, has the right to vote on, or has the power to sell or direct the sale of, the percentage of a class of a voting security of the dealer or investment adviser applicant specified in sub-subparagraph 1.c. or 1.d. For purposes of this sub-subparagraph, a person beneficially owns any securities:

(I) That are owned by the shareholder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or

(II) That the shareholder has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the securities.

b. A general partner of a partnership, and a limited partner of a partnership who has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant.

c. A trustee of a trust that owns a percentage of a class of a voting security of a dealer or investment adviser applicant, or that has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant.

d. A member of a limited liability company who has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant, and all limited liability company managers of a dealer or investment adviser applicant.

3. For purposes of this subsection, the term "shareholder" means a person who owns at least one share of a corporation and whose ownership is reflected in the records of the corporation.

(b) A vendor, entity, or agency authorized under s. 943.053(13) to submit fingerprints electronically to the Department of Law Enforcement shall submit the fingerprints to the department for state processing, and the department shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(c) Fees for state and federal fingerprint processing shall be borne by the person subject to the criminal history record check. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).

(d) The office shall review the results of the state and federal criminal history record checks and determine whether the

applicant is disqualified from registration. The commission may waive by rule the requirement that the persons listed in this subsection submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. In waiving the requirement, the commission may consider the rules and regulations of the Securities and Exchange Commission, the model rules and acts of the North American Securities Administrators Association, Inc., and the rules and regulations of the Financial Industry Regulatory Authority.

(11)(a) ~~(10)(a)~~ If the office finds that the applicant has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (10)(a) ~~(9)(a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not

renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (10)(a) ~~(9)(a)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (10)(a) ~~(9)(a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at

the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

(15)~~(14)~~

(b) In lieu of filing with the office the applications specified in subsection (5), the fees required by subsection (10) ~~(9)~~, the renewals required by subsection (11) ~~(10)~~, and the termination notices required by subsection (12) ~~(11)~~, the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(20)~~(19)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees

under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of organization and amendments to the articles and a copy of the company's operating agreement as may be amended; or

c. A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person

having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. ~~Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.~~ The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's full name and any other names by which the applicant or person may have been known and the applicant's or person's age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c)1. The following natural persons must submit a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized under s. 943.053(13) for live-scan processing in accordance with rules adopted by the commission:

a. A natural person filing an application with the office for registration as an intermediary.

b. A natural person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, or director for an intermediary applicant.

c. A natural person who is a 5 percent or more owner of an intermediary applicant.

d. With respect to each 5 percent or more owner of an intermediary applicant that is a corporation, partnership, trust, or limited liability company, each natural person who is a 25 percent or more owner or trustee of such entity, and each natural person who is a 25 percent or more owner or trustee at each level up the chain of ownership up to, but not including an entity subject to s. 12 or s. 15(d) of the Securities Exchange Act of 1934, as amended.

2. For purposes of this subsection, the term "owner" means:

a. A shareholder who owns a percentage of a class of voting securities of an intermediary applicant, and includes any person who owns, beneficially owns, has the right to vote on, or has the power to sell or direct the sale of, the percentage of a class of a voting security of the intermediary applicant specified in sub-subparagraph 1.c. or 1.d. For purposes of this sub-subparagraph, a person beneficially owns any securities:

(I) That are owned by the shareholder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling,

mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or

(II) That the shareholder has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the securities.

b. A general partner of a partnership, and a limited partner of a partnership who has the right to receive upon dissolution, or has contributed, a percentage of the capital of an intermediary applicant.

c. A trustee of a trust that owns a percentage of a class of a voting security of an intermediary applicant, or that has the right to receive upon dissolution, or has contributed, a percentage of the capital of an intermediary applicant.

d. A member of a limited liability company who has the right to receive upon dissolution, or has contributed, a percentage of the capital of an intermediary applicant, and, all limited liability company managers of an intermediary applicant.

3. For purposes of this subsection, the term "shareholder" means a person who owns at least one share of a corporation and whose ownership is reflected in the records of the corporation.

(d) The vendor, entity, or agency authorized under s. 943.053(13) to submit fingerprints electronically to the Department of Law Enforcement shall submit the fingerprints to the department for state processing, and the department shall

forward the fingerprints to the Federal Bureau of Investigation for national processing.

(e) Fees for state and federal fingerprint processing must be borne by the person subject to the criminal history record check. The state cost for fingerprint processing is as provided in s. 943.053(3)(e).

(f) The office shall review the results of the state and federal criminal history record checks and determine whether the applicant is disqualified from registration. The commission may waive by rule the requirement that applicants, including any persons listed in sub-subparagraphs (c)1.a.-d., submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. In waiving the requirement, the commission may consider the rules and regulations of the Securities and Exchange Commission, the model rules and acts of the North American Securities Administrators Association, Inc., and the rules and regulations of the Financial Industry Regulatory Authority.

(g) ~~(e)~~ The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(h) ~~(d)~~ An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or Securities and Exchange Commission Rule

506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests of the intermediary is subject to this requirement.

(i) ~~(e)~~ If the office finds that the applicant has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(21)~~(20)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, with regard to the sale of a security as defined in s. 517.021(30)(g) ~~s. 517.021(25)(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 constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(22)(a)~~(21)(a)~~ As used in this subsection, the term:

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

2. "Business combination related shell company" means a shell company that is formed by an entity that is not a shell company solely for the purpose of:

a. Changing the corporate domicile of the entity solely within the United States; or

b. Completing a business combination transaction, as defined in 17 C.F.R. s. 230.165(f), among one or more entities other than the company itself, none of which is a shell company.

3.~~2.~~ "Control person" means a person ~~an individual or entity~~ that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed

to be a control person of a company if, upon completion of a transaction, the buyer or group of buyers ~~with respect to a particular company, the person~~:

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

a.~~b.~~ Has the power to vote 25 ~~20~~ percent or more of a class of voting securities or has the power to sell or direct the sale of 25 ~~20~~ percent or more of a class of voting securities; or

b.~~c.~~ In the case of a partnership or limited liability company, may receive upon dissolution, or has contributed, 25 ~~20~~ percent or more of the capital.

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

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

b. In the fiscal year immediately preceding the fiscal year during which the merger and acquisition broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, has earnings before interest, taxes, depreciation, and amortization of less than $25 million or has gross revenues of less than $250 million. On July 1, 2021, and every 5 years thereafter, each dollar amount in this sub-subparagraph shall be adjusted by dividing the annual value of the Employment Cost Index for wages and salaries for private industry workers, or any successor index, as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made, by the annual value of such index or successor index for the calendar year ending December 31, 2020 ~~2012~~, and multiplying such dollar amount by the quotient obtained. Each dollar amount determined under this sub-subparagraph must ~~shall~~ be rounded to the nearest multiple of $100,000 and adopted by commission rule.

5.~~4.~~ "Merger and acquisition broker" means a ~~any~~ broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the ~~that~~ broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination

involving, securities or assets of the eligible privately held company.

6.~~5.~~ "~~Public~~ Shell company" means a company that at the time of a transaction with an eligible privately held company:

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

a.~~b.~~ Has nominal or no operations.~~; and~~

b.~~c.~~ Has nominal assets or no assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) Prior to the completion of any securities transaction described in s. 517.061(7), a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

1. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be a control person of the eligible privately held company or will be a control person

for the business conducted with the assets of the eligible privately held company.~~; and~~

2. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be deemed to be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company, and active in the management of the assets of the eligible privately held company, if he or she engages in any of the following acts or activities:

a. Electing executive officers.

b. Approving the annual budget.

c. Serving as an executive or other executive manager.

d. Carrying out such other activities as the commission may by rule determine to be in the public interest.

3.~~2.~~ If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must

include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(7) is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the ~~United States~~ Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., as amended, or with the office under s. 517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d), as amended;

3. Engages on behalf of any party in a transaction involving a ~~public~~ shell company, other than a business combination related shell company;

4. Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company;

5. Assists any party to obtain financing from an unaffiliated third party without:

a. Complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T under 12 C.F.R. ss. 220 et seq., as amended; and

b. Disclosing any compensation in writing to the party;

6. Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation;

7. Facilitates a transaction with a group of buyers formed with the assistance of the merger and acquisition broker to acquire the eligible privately held company;

8. Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers;

9. Binds a party to a transfer of ownership of an eligible privately held company; or

10. Is subject to, or an officer, director, member, manager, partner, or employee of the broker is subject to, the following disciplinary actions:

a. Has been barred from association with a broker or dealer by the Securities and Exchange Commission, any state, or any self-regulatory organization; or

b. Is suspended from association with a broker or dealer.

~~4. Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4);~~

~~5. Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(39);~~

~~6. Is subject to a disqualification under the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or~~

~~7. Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4)(H).~~

Section 9. Subsection (1), paragraph (a) of subsection (2), and subsections (3) and (5) of section 517.131, Florida Statutes, are amended to read:

517.131 Securities Guaranty Fund.—

(1) As used in this section, the term:

(a) "Final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(b) "Restitution order" means a court order awarding a specified monetary amount to a named aggrieved person for a violation of s. 517.07 or s. 517.301 to be paid by a named violator.

(2)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ for associated persons must be part of the regular registration license fee and must be transferred to or deposited in the Securities Guaranty Fund.

(3) A person is eligible for payment from the Securities Guaranty Fund if the person:

(a)1. Is a judgment creditor in ~~Holds~~ an unsatisfied final judgment or a named beneficiary or victim in an unsatisfied

restitution order entered on or after October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301;

2. Has applied any amount recovered from the judgment debtor, a person ordered to pay restitution, or any other source to the damages awarded in a final judgment or restitution order ~~by the court or arbitrator~~; and

3. Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation of s. 517.07 or s. 517.301; or

(b) Is a receiver appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution under s. 517.191(3) as a result of a violation of s. 517.07 or s. 517.301 which has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (a).

If a person holds an unsatisfied final judgment or restitution order entered before October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301, such person's claim for payment from the Securities Guaranty Fund shall be governed by the terms of this section and s. 517.141 which were effective on the date of such final judgment or restitution order.

(5) An eligible person, or a receiver on behalf of the eligible person, seeking payment from the Securities Guaranty

Fund must file with the office a written application on a form that the commission may prescribe by rule. The commission may adopt by rule procedures for filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section. The application must be filed with the office within 1 year after the date of the final judgment, the date on which a restitution order has been ripe for execution, or the date of any appellate decision thereon, and, at minimum, must contain all of the following information:

(a) The eligible person's and, if applicable, the receiver's full names, addresses, and contact information.

(b) The name of the judgment debtor or person ordered to pay restitution.

(c) If the eligible person is a business entity, the eligible person's type and place of organization and, as applicable, a copy, as amended, of its articles of incorporation, articles of organization, trust agreement, or partnership agreement.

(d) A copy of any final judgment or ~~and a copy thereof.~~

~~(e) Any~~ restitution order ~~pursuant to s. 517.191(3), and a copy thereof~~.

(e)~~(f)~~ An affidavit from the eligible person stating either one of the following:

1. That the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor or person ordered to pay restitution possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment or restitution order and, by the eligible person's search, that the eligible person has not discovered any property or assets.

2. That the eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment or restitution order remains unsatisfied.

(f) ~~(g)~~ If the application is filed by the receiver, an affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is appointed; and the amount of any unsatisfied portion of any eligible person's restitution order ~~of restitution~~.

(g) ~~(h)~~ The eligible person's residence or domicile at the time of the violation of s. 517.07 or s. 517.301 which resulted in the eligible person's monetary damages.

(h) ~~(i)~~ The amount of any unsatisfied portion of the eligible person's final judgment or restitution order.

(i) ~~(j)~~ Whether an appeal ~~or motion to vacate an arbitration award~~ has been filed.

Section 10. Subsection (3) of section 517.301, Florida Statutes, is amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.—

(3) It is unlawful for a person in issuing or selling a security within this state, including a security exempted under s. 517.051 and including a transaction exempted under s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security or person ~~business entity~~ has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

Section 11. Subsection (4) of section 517.34, Florida Statutes, is amended to read:

517.34 Protection of specified adults.—

(4) A delay on a disbursement or transaction under subsection (3) expires 15 business days after the date on which the delay was first placed. However, the dealer or investment adviser may extend the delay for up to 30 ~~10~~ additional business days if the dealer's or investment adviser's review of the available facts and circumstances continues to support such dealer's or investment adviser's reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. A dealer or investment adviser that extends a delay must notify the office

on a form prescribed by commission rule not later than 3 business days after the date on which the extension was applied. The notice must identify the dealer or investment adviser that extended the delay and the date on which the delay was originally made. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a dealer or investment adviser from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

Section 12. Subsection (1) of section 517.211, Florida Statutes, is amended to read:

517.211 Private remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (9), (11), (13), (16), or (18) ~~s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17)~~ may be rescinded at the election of the purchaser; however, a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification or in violation of the provisions of s. 517.12(13) ~~s. 517.12(12)~~ relating to filing a change of address amendment is not subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the

sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days after receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 13. Subsection (2) of section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(2) After the transfer required in subsection (1), the office shall transfer the $50 assessment fee collected from each associated person under s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ and 30.44 percent of the $100 assessment fee paid by

dealers and investment advisers for each office in the state under s. 517.12(10) and (11) ~~s. 517.12(9) and (10)~~ to the Regulatory Trust Fund.

Section 14. This act shall take effect upon becoming a law.

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

Remove everything before the enacting clause and insert:
An act relating to securities; amending s. 517.021, F.S.; providing and revising definitions; amending s. 517.061, F.S.; revising the circumstances under which securities transactions are exempt from registration requirements; conforming cross-references; amending s. 517.0612, F.S.; revising the filing requirements for securities issuers under the Florida Invest Local Exemption law; amending s. 517.0614, F.S.; revising circumstances under which securities offers and sales are not subject to integration with other offerings; amending s. 517.0616, F.S.; revising the registration exemptions that are available to specified issuers under certain circumstances; providing applicability of certain disqualification provisions under a specified Securities and Exchange Commission rule; amending s. 517.075, F.S.; making a technical change;

amending s. 517.081, F.S.; revising the requirements for securities registration applications; amending s. 517.12, F.S.; revising the list of persons who must submit fingerprints for live-scan processing for registration applications; providing fees for fingerprint processing; defining the term "owner"; defining the term "shareholder"; authorizing the Financial Services Commission to consider certain rules and regulations in waiving the fingerprint requirement; providing and revising definitions; revising the written assurances requirements that merger and acquisition brokers must receive from certain control persons under specified circumstances; revising the circumstances under which merger and acquisition brokers are not exempt from specified securities registration; conforming cross-references; amending s. 517.131, F.S.; defining the term "restitution order"; revising the circumstances under which a person is eligible for payment from the Securities Guaranty Fund; revising the requirements for applications for payment from the fund; conforming cross-references; amending s. 517.301, F.S.; specifying a prohibition against certain misrepresentations in a person issuing and selling securities; amending s. 517.34, F.S.; revising the

maximum number of days by which a dealer or investment adviser may extend a delay on a disbursement or transaction; amending ss. 517.211 and 517.315, F.S.; conforming cross-references; providing an effective date.

CS/HB 453

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 453	**COMPANION BILL:** SB 570 (Gruters)
TITLE: Pool/Spa Contractors	**LINKED BILLS:** None
SPONSOR(S): Smith, Alvarez, D.	**RELATED BILLS:** None

Committee References

Industries & Professional Activities 12 Y, 0 N, As CS	➤	Commerce

SUMMARY

Effect of the Bill:

The bill clarifies and expands the scope of work for swimming pool/spa contractors.

Fiscal or Economic Impact:

The bill may have a positive economic impact on swimming pool/spa contractors by expanding their scope of work and clarifying their current scope of work.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill **expands** the scope of work for all swimming pool/spa contractors to include the installation of lighting, light transformers, and the connection, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical circuit disconnect for swimming pool, spa, hot tub, or interactive water feature[1] equipment. However, swimming pool/spa service contractors may only repair or replace lighting and light transformers, and may not install such items. (Section 1)

The bill **expands** the scope of work for **residential swimming pool/spa contractors** by allowing them to perform work on a commercial swimming pool, spa, hot tub, or public bathing place.[2] However, a residential swimming pool/spa contractor **may not** build a new commercial swimming pool spa, hot tub, or public bathing place. (Section 1)

The bill expands the scope of work for swimming pool/spa service contractors to include the **renovation or remodeling** of a swimming pool, hot tub, spa, interactive water feature, decorative water feature, public bathing place, or swimming pool or spa appurtenance. Currently, swimming pool/spa service contractors may only perform servicing and make repairs. (Section 1)

The bill provides that a swimming pool/spa contractor **may not** install or upgrade a dedicated electrical disconnect or electrical circuits, or perform any work inside a main electrical panel. The bill also clarifies that a

[1] The Florida Building Code defines "interactive water features" as a type of swimming pool that is a structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Section 454 of the Eighth edition of the Florida Building Code (Building).

[2] A "public bathing place" is a body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state. S. 514.011(4), F.S.

swimming pool/spa contractor may not make direct connections to a sanitary sewer system or to potable water lines. (Section 1)

The bill redefines the scope of work for a **commercial pool/spa contractor** to **clarify** that it includes but is not limited to:

- All phases of construction, repair, renovation, remodel, deconstruction, and servicing of a swimming pool, hot tub, spa, interactive water feature, decorative water feature, public bathing place, or a swimming pool or spa appurtenance.
- The construction of uninhabitable equipment rooms for swimming pool, spa, hot tub, or interactive water feature equipment.
- Excavation and earthmoving required for the installation of swimming pools, spas, hot tubs, or interactive water features.
- The operation of construction pumps for dewatering purposes and for draining swimming pools, spas, hot tubs, or interactive water features.
- The installation of rebar or similar support materials, and the shaping and shooting of gunite dry mix and wet mix, concrete, or similar product mix used in the construction of swimming pools, spas, hot tubs, or interactive water features.
- The installation of equipotential bonding, light conduits, and any cleaning or sanitizing equipment that requires at least partial disassembling.
- The installation of fiberglass swimming pool, spa, or hot tub shells and vinyl pool, spa, or hot tub liners.
- The application and removal of all interior pool, spa, hot tub, or interactive water feature finishes.
- The construction, maintenance, or remodel of decorative or interactive water features, displays that use recirculated water.
- The installation of all swimming pool, spa, hot tub, or interactive water feature piping.
- The construction and installation of retaining walls, concrete flatwork, pavers and bricks, and footings for the construction of a swimming pool, spa, hot tub, or interactive water feature.
- The scope of work of a swimming pool/spa servicing contractor. (Section 1)

The bill redefines the scope of work for **residential pool/spa contractors** to **clarify** that their scope of work is the same as a commercial pool/spa contractor, except a residential pool/spa contractor **may not** construct any **new** commercial swimming pool, spa, hot tub, or public bathing place. (Section 1)

The bill redefines the scope of work for a **swimming pool/spa servicing contractor** to clarify that it includes, but is not limited to:

- All aspects of the repair or servicing of a swimming pool, hot tub, spa, interactive water feature, decorative water feature, public bathing place, or swimming pool or spa appurtenance.
- The repair or replacement of equipotential bonding, light conduit, and any cleaning or sanitizing equipment that requires at least partial disassembling.
- The installation, repair, or replacement of all swimming pool, spa, hot tub, or interactive water feature equipment, including, but not limited to, pool pumps, filters, feeders, controllers, and heaters.
- The repair of uninhabitable equipment for swimming pool, spa, hot tub, or interactive water feature equipment.
- The repair or replacement of all perimeter piping and filter piping.
- The substantial or complete draining of a swimming pool, spa, or hot tub for repair or renovation and the operation of construction pumps for dewatering purposes.
- The removal and reapplication of all interior swimming pool, spa, hot tub, or interactive water feature finishes.
- The installation, repair, or replacement of all tile and coping for a swimming pool, spa, hot tub, or interactive water feature. (Section 1)

The bill clarifies that **licensure is not required** when using equipment for:

- Treating or cleaning a swimming pool, spa, hot tub, or interactive water feature unless such use involves installation, modification, or replacement of the equipment or affects the structural integrity of the swimming pool, spa, hot tub, or interactive water feature.
- Treating water.

- Changing the filter media.[3] (Section 1)

The bill provides an effective date of July 1, 2025. (Section 2)

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Swimming pool/spa contractor

Chapter 489, F.S., regulates the profession of contracting in the state. Generally speaking, a licensed contractor is the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, and whose job scope is substantially similar to the job scopes described in s. 489.105, F.S.[4]

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within Department of Business and Professional Regulation. The CILB is responsible for licensing statewide construction contractors and regulating the construction industry in Florida under part I of Ch. 489, F.S.[5]

Currently there are three types of swimming pool/spa contractors:
- Commercial pool/spa contractor.
- Residential pool/spa contractor.
- Swimming pool/spa servicing contractor.

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]
- Installing, repairing, or replacing existing equipment;
- Cleaning or sanitizing equipment that requires at least a partial disassembling, excluding filter changes;
- Installing new interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of work for commercial pool/spa contractors; however, residential pool/spa contractors **may only** work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]
- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and

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[3] The filter media is the media inside a pool filter, such as sand, that traps debris and contaminants. AquaDoc Choosing the Right Filter Media for Your Pool (June 13, 2024) https://www.mavaquadoc.com/blogs/pool-maintenance-blog/choosing-the-right-filter-media-for-your-pool#:~:text=The%20filter%20media%20is%20the%20material%20inside%20your,to%20choose%20the%20best%20one%20for%20your%20pool. (last visited March 21, 2025)
[4] S. 489.105(3), F.S.
[5] S. 489.107, F.S.
[6] S. 489.105(3)(j), F.S.
[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.

- Substantially or completely draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool/spa does not require a license unless the structural integrity of the pool/spa is affected or the equipment attached to the pool/spa must be substantially or completely disassembled or replaced. Installing an aboveground pool also does not require a license.[10]

A contractor, including swimming pool/spa contractors, must **subcontract all electrical,** mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

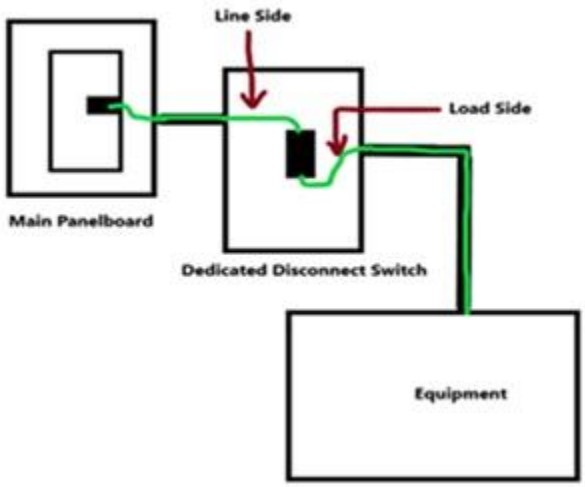
Dedicated electrical circuit

An electrical circuit is a path or loop through which electricity flows. An electrical disconnect or breaker is a switch that stops the flow of the electrical circuit if the devices or appliances draw too much power. A regular or non-dedicated electrical circuit supplies electricity from the breaker to multiple outlets. [12]

A dedicated electrical circuit has its very own circuit breaker that only supports one outlet and therefore is dedicated to powering just one device or appliance. Dedicated circuits are designed to protect major appliances and devices that draw a lot of power, such as refrigerators, from electrical damage. They also prevent fires and electrocution by ensuring the device or appliance does not draw more power than the circuit can handle.[13]

[9] S. 489.105, F.S.
[10] Ss 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited March 21, 2025).
[11] S. 489.113(3), F.S.
[12] Harrison Electric Inc., *What Are Dedicated Circuits & Which Appliances Should Have Them?*, (July 20, 2020) https://harrison-electric.com/Blog/entryid/205/what-are-dedicated-circuits-which-appliances-should-have-them (last visited on March 20, 2025); Michael Christian, *What Is an Electrical Disconnect and Its Importance?*, House and Home Online (December 20, 2023) https://houseandhomeonline.com/what-is-an-electrical-disconnect/ (last visited march 21, 2025).
[13] Harrison Electric Inc., *Dedicated Circuits: What They Are & How to Determine If You Need Them*, (August 16, 2021) https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them (last visited on March 20, 2025).

The load side of an electrical circuit are the wires passing electricity from a device in the circuit downstream to other devices, while the "line side" are the wires bringing electricity to the device.[14]



Pool Light Transformer

Genereally, pool lights use low voltage, usually around 12 volts, to minimize the risk of electric shock in the pool area. A pool light transformer converts higher voltage from a structure's main electrical system to the lower voltage required by the pool lights. This protects the pool lights from overloading.[15]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Industries & Professional Activities Subcommittee	12 Y, 0 N, As CS	3/26/2025	Anstead	Brackett
THE CHANGES ADOPTED BY THE COMMITTEE:	• Clarified that a pool/spa contractor may only perform excavation and earthmoving if it's required for the installation of a swimming pool, spa, hot tub, or interactive water feature			
Commerce Committee			Hamon	Brackett

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

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[14] Timothy Thiele, *Line vs. Load Wiring: What's the Difference?*, The Spruce (April 19, 2024) https://www.thespruce.com/line-and-load-connections-1152729

[15] Schematic Central, *How to Wire a Pool Light Transformer: A Complete Wiring Diagram*, https://schempal.com/pool-light-transformer-wiring-diagram (last visited March 24, 2025).

A bill to be entitled

An act relating to pool/spa contractors; amending s. 489.105, F.S.; revising the definition of the terms "commercial pool/spa contractor," "residential pool/spa contractor," and "swimming pool/spa servicing contractor"; providing an effective date.

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

Section 1. Paragraphs (j), (k), and (l) of subsection (3) of section 489.105, Florida Statutes, are amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height;

and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(j) "Commercial pool/spa contractor" means a contractor whose scope of work includes ~~involves~~, but is not limited to, all phases of the construction, repair, renovation, remodel, deconstruction, and servicing of a ~~any~~ swimming pool, ~~or~~ hot tub, ~~or~~ spa, splash pad or other interactive water feature, decorative water feature, public bathing place, or swimming pool or spa appurtenance, whether public, private, or otherwise, regardless of use.

1. The scope of such work includes, but is not limited to, the following:

a. The scope of work of a swimming pool/spa servicing contractor.

b. The connection, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical circuit disconnect means for swimming pool, spa, hot tub, or interactive water feature equipment.

c. The installation of equipotential bonding; swimming pool, spa, or hot tub lighting; light transformers; light conduit; and any cleaning or sanitizing equipment that requires at least partial disassembling.

d. The construction of uninhabitable equipment rooms or

housing for swimming pool, spa, hot tub, or interactive water feature equipment for the protection of the equipment from outside elements or preventing unauthorized access.

e. Excavation and earthmoving only as required for the installation of swimming pools, spas, hot tubs, or interactive water features.

f. The operation of construction pumps for dewatering purposes for swimming pool, spa, hot tub, or interactive water feature excavation sites, and for draining swimming pools, spas, hot tubs, or interactive water features.

g. The installation of rebar or similar support materials for swimming pool, spa, hot tub, or interactive water feature structures, and the shaping and shooting of gunite dry mix and wet mix, concrete, or similar product mix used in the construction of swimming pools, spas, hot tubs, or interactive water features.

h. The installation of fiberglass swimming pool, spa, or hot tub shells and vinyl swimming pool, spa, or hot tub liners.

i. The application and removal of all interior swimming pool, spa, hot tub, or interactive water feature finishes.

j. The construction, maintenance, or remodel of decorative or interactive water features, displays, or areas that use recirculated water, including fountains, waterfalls, and spray nozzles.

k. The installation of all swimming pool, spa, hot tub, or

interactive water feature piping, including, but not limited to, drain piping, perimeter piping, and circulation or filter piping used in the construction of swimming pools, spas, hot tubs, or decorative or interactive water feature displays or areas.

1. The construction and installation of retaining walls, concrete flatwork, pavers and bricks, and footings for the construction of a swimming pool, spa, hot tub, or interactive water feature, whether newly constructed or additions to or remodels of an existing swimming pool, spa, hot tub, or interactive water feature ~~The installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor~~.

2. The scope of ~~such~~ work does not include direct connections to a sanitary sewer system or to potable water lines, the installation or upgrade of dedicated electrical disconnect or electrical circuits, or any work inside a main electrical panel. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~treatment or cleaning of the pool or spa requires licensure; however,~~

3. The usage of swimming pool, spa, hot tub, or interactive water feature ~~such~~ equipment for ~~the purposes of~~ water treatment or cleaning does not require licensure unless the usage involves installation ~~construction~~, modification, or replacement of such equipment. Water treatment that does not require such equipment; filter media changes; or the cleaning of a swimming pool, spa, hot tub, or interactive water feature, or its associated equipment, which does not affect the structural integrity of the swimming pool, spa, hot tub, or interactive water feature, does not require a license. ~~In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.~~

(k) "Residential pool/spa contractor" means a contractor whose scope of work is the same as a commercial pool/spa contractor under paragraph (j) but does not include the construction of any new commercial swimming pool, spa, hot tub, or public bathing place ~~involves, but is not limited to, the construction, repair, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the~~

~~installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment~~.

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work includes ~~involves~~, but is not limited to, all aspects of the repair, renovation, remodeling, or ~~and~~ servicing of a swimming pool, ~~or~~ hot tub, ~~or~~ spa, splash pad or other interactive water feature, decorative water feature, public bathing place, or swimming pool or spa

appurtenance, whether public or private, or otherwise, regardless of use.

1. The scope of work includes, but is not limited to, the following:

a. The installation, repair, or replacement of all swimming pool, spa, hot tub, or interactive water feature equipment, including, but not limited to, pool pumps; filters; feeders; controllers; and swimming pool, spa, or hot tub heaters, whether electric, gas, or solar.

b. The connection, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical circuit disconnect means for swimming pool, spa, hot tub, or interactive water feature equipment.

c. The repair or replacement of equipotential bonding; swimming pool, spa, or hot tub lighting; light transformers; light conduit; and any cleaning or sanitizing equipment that requires at least partial disassembling.

d. The repair of uninhabitable equipment rooms or housing for swimming pool, spa, hot tub, or interactive water feature equipment.

e. The repair or replacement of all perimeter piping and filter piping.

f. The substantial or complete draining of a swimming pool, spa, or hot tub for repair or renovation and the operation of construction pumps for dewatering purposes for drained

swimming pools, spas, hot tubs, or interactive water features.

g. The removal and reapplication of all interior swimming pool, spa, hot tub, or interactive water feature finishes.

h. The installation, repair, or replacement of all tile and coping for a swimming pool, a spa, a hot tub, or an interactive water feature ~~the repair or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair or renovation~~.

2. The scope of the ~~such~~ work does not include direct connections to a sanitary sewer system or to potable water lines, the installation or upgrade of dedicated electrical disconnect or electrical circuits, or any work inside a main electrical panel. ~~The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however,~~

3. The usage of swimming pool, spa, hot tub, or interactive water feature ~~such~~ equipment for ~~the purposes of~~

water treatment or cleaning does not require licensure unless the usage involves installation ~~construction~~, modification, ~~substantial or complete disassembly,~~ or replacement of such equipment. Water treatment that does not require such equipment; filter media changes; or the cleaning of a swimming pool, a spa, a hot tub, or an interactive water feature, or its associated equipment, which does not affect the structural integrity of the swimming pool, spa, hot tub, or interactive water feature does not require a license. ~~In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.~~

Section 2. This act shall take effect July 1, 2025.

COMMERCE COMMITTEE

CS/HB 453 by Rep. Smith
Pool/Spa Contractors

AMENDMENT SUMMARY
April 7, 2025

Amendment 1 by Rep. Smith (line 158):

- Clarifies that pool/spa contractors may install manufactured pool, spa, or hot tub heaters that are commercially available.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Commerce Committee

Representative Smith offered the following:

Amendment

Remove line 158 and insert:

feeders; controllers; and commercially available swimming pool, spa, or hot tub

CS/HB 541

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 541	**COMPANION BILL:** CS/CS/SB 676 (Martin)
TITLE: Minimum Wage Requirements	**LINKED BILLS:** None
SPONSOR(S): Chamberlin	**RELATED BILLS:** None

Committee References

Industries & Professional Activities 10 Y, 5 N	➤ Careers & Workforce 12 Y, 4 N, As CS	➤ Commerce

SUMMARY

Effect of the Bill:

The bill amends the Florida Minimum Wage Act (Act) to allow employees to opt out of receiving the state minimum wage for work-study, internship, preapprenticeship program, or other similar work-based learning opportunities.

Fiscal or Economic Impact:

The bill does not appear to have a fiscal impact on state or local government. The bill allows certain employees to opt out of receiving minimum wage. The fiscal impact on such employees is indeterminate.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill amends the Act to provide specific exemptions from state minimum wage requirements for certain employees. The bill provides that employers are not required to pay the state minimum wage to employees in a structured work-study, internship, preapprenticeship, or other similar work-based learning opportunity, provided such employees choose to opt out of receiving the state minimum wage. However, such employees must be paid at or above the federal minimum wage. The bill requires such opt out be voluntary and prohibits an employer from coercing an employee to opt out or conditioning an offer of employment on the employee opting out. Under the bill, the written waiver voluntarily signed by the employee must state that the employee acknowledges his or her right to the state minimum wage pursuant to the State Constitution and that the employee is knowingly and voluntarily choosing to receive a lesser amount for his or her work-based learning opportunity. The bill specifies that an employee's waiver to opt out of the state minimum wage is only valid for 12 months after the date his or her employment with the employer begins. Thereafter, the bill requires the employee be paid at or above the state minimum wage regardless of his or her position or job title with the employer. (Section 1)

The effective date of the bill is July 1, 2025. (Section 2)

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

Indeterminate. The bill allows certain employees to opt out of receiving minimum wage.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.[1] In 1938, the FLSA established a minimum wage of $.25 an hour. The current federal minimum wage rate is $7.25 an hour, which went into effect July 24, 2009. The FLSA applies to employment within any state in the U.S., the District of Columbia, or any territory or possession of the U.S.[2]

The FLSA covers most private and public sector **employees**. However, certain employers and employees are exempt from coverage, including individuals with disabilities, youth workers, tipped workers, and executive, administrative, and professional workers. The FLSA covers businesses if the business has annual sales of at least $500,000.[3] It also covers certain individual employees if such employee is engaged in interstate commerce.

The FLSA applies to all:[4]

- **Governments**: Federal, state, or local government agencies.
- **Hospitals**: Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.
- **Schools**: Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. It does not matter if the school or institution is public or private or operated for profit or not-for-profit.

The FLSA includes several exemptions from the federal minimum wage provisions, including:[5]

- Executive, administrative, and professional employees.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by certain employers.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.[6]
- **Tipped employees**, as long as their tips, combined with the employer's cash wage, equal at least the federal minimum wage ($7.25). The minimum cash wage for tipped employees is $2.13 per hour, with the employer able to claim a tip credit of up to $5.12 per hour.[7]
- **Learners, apprentices, and messengers employed primarily in delivering letters and messages, under special certificates issued by the Department of Labor**.[8]

The FLSA provides for the employment of certain individuals at wage rates below the minimum wage including student-learners (vocational education students), as well as full-time students employed by retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Certificates issued by the Department of Labor's Wage and Hour Division are required for this type of employment.[9]

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[1] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.
[2] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713, (last visited March 7, 2025). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.).
[3] The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least $500,000. Owners of rental properties are covered if they collect at least $500,000 annually in rent. 29 C.F.R.§§779.258-779.259.
[4] U.S. Department of Labor, Fair Labor Standards Act Advisor, https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited March 7, 2025).
[5] 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)
[6] *See* Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).
[7] 29 U.S.C. § 203(m)(2)(A).
[8] 29 U.S.C. § 214.
[9] U.S. Department of Labor, Subminimum Wage, https://www.dol.gov/general/topic/wages/subminimumwage

The FLSA exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for humanitarian purposes for non-profit food banks. There is also a recognized exception for individuals who volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.[10]

The FLSA was amended in 2014, concerning border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least $290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay. These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.[11]

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.[12] **Consequently, no state law may weaken the worker protections in the FLSA.** However, state laws that impose greater worker protections will supersede those in the FLSA.[13]

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.[14] For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Florida law does not indicate or allow for wage exceptions for learners, apprentices, or messengers. Thus, the FLSA provisions apply.

Florida's Minimum Wage Contained in Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.[15] Prior to this date, Florida did not have a state minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.[16] The amendment also provides that "all working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services."[17]

On November 3, 2020, Florida voters again approved a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to $15 an hour by the year 2026.[18] Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase by $1 until the minimum wage reaches **$15 per hour on September 30, 2026.** Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 to 2021.

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[10] U.S. Department of Labor, Wage and Hour Division, Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act, https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships

[11] s. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (*See* Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941).

[12] 29 U.S.C. §218.

[13] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, *Updated March 8, 2023*, https://crsreports.congress.gov/product/pdf/R/R42713, (last visited March 7, 2025).

[14] U.S. Department of Labor, Consolidated Minimum Wage Table, https://www.dol.gov/agencies/whd/mw-consolidated (last visited March 7, 2025).

[15] Art. X, s. 24, Fla. Const.

[16] Art. X, s. 24(c), Fla. Const.

[17] Art. X, s. 24(a), Fla. Const.

[18] U.S. Department of State, *Notice of Increase to State of Florida's Minimum Wage*, https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf (last visited March 7, 2025).

Section 24 specifies that "employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida."[19] Section 24 authorizes persons aggrieved by violations the following remedies:[20]

- A civil action.
- Recovery of the full amount of back wages unlawfully withheld plus the same amount as liquidated damages.
- Reasonable attorney's fees and costs.
- Legal or equitable relief, including, reinstatement in employment and/or injunctive relief.

Section 24 provides that any employer or other person found liable for willful violations is subject to a $1,000 fine per violation, and the attorney general or other official designated by the state legislature may also bring a civil action.

Section 24 provides that "implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment."[21]

Employees

Section 24 references the FLSA and specifically ties the meaning[22] of "employer," "employee," and "wage," to the meanings established under the FLSA and its implementing regulations.[23] It also indicates that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida's Constitution related to Section 24 and any implementing statutes or regulations.[24]

The FLSA defines:[25]

- "Employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."
- "**Employee**" as "any individual employed by an employer."

The FLSA requires "for-profit" employers to pay **employees** for their work. Interns and students, however, may not be "**employees**" under the FLSA—in which case the FLSA does not require compensation for their work. Courts have used the "primary beneficiary test" to determine whether an intern or student is, in fact, an employee under the FLSA.[26] This determination is made on a case-by-case basis.

This test allows courts to examine the "economic reality" of the intern-employer relationship to determine which party is the "primary beneficiary" of the relationship. Courts[27] have identified the following seven factors as part of the test:

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[19] Art. X, s. 24(c), Fla. Const.
[20] Art. X, s. 24(e), Fla. Const.
[21] Art. X, s. 24(f), Fla. Const.
[22] *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004). ("The proposed amendment does not state that it is adopting the FLSA's *definition* of the term "employee," but provides that it is adopting the *meaning* of the term "employee," which is a much broader concept.")
[23] Art. X, s. 24(b), Fla. Const.
[24] Art. X, s. 24(f), Fla. Const.
[25] 29 U.S.C. §203.
[26] E.g., Benjamin v. B & H Educ., Inc., --- F.3d ---, 2017 WL 6460087, at *4-5 (9th Cir. Dec. 19, 2017); Glatt v. Fox Searchlight Pictures, Inc., 811 F.3d 528, 536-37 (2d Cir. 2016); Schumann v. Collier Anesthesia, P.A., 803 F.3d 1199, 1211-12 (11th Cir. 2015); see also Walling v. Portland Terminal Co., 330 U.S. 148, 152-53 (1947); Solis v. Laurelbrook Sanitarium & Sch., Inc., 642 F.3d 518, 529 (6th Cir. 2011).
[27] Schumann v. Collier Anesthesia, PA, 803 F.3d 1199 (11th Cir. 2015) (Adopting a modified version of the "primary beneficiary" test, which examines the "economic reality" of the relationship between the intern and employer to determine who benefits most.)

- The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
- The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
- The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
- The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
- The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
- The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the "primary beneficiary test" as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an **employee**, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

Florida Minimum Wage Act

The Act implements the minimum wage provisions in the Florida Constitution.[28] The Act designates the Department of Commerce (DC) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.[29]

The Act provides that, effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FLSA and its implementing regulations are eligible to receive the state minimum wage pursuant to the Florida Constitution and this statute. The provisions of ss. 213 and 214 of the federal FLSA, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.[30]

The Act requires DEO to calculate an adjusted state minimum wage rate and requires the Department of Revenue (DOR) and DEO to annually publish the amount of the adjusted state minimum wage and the effective date on their websites. The Act authorizes persons to file a complaint or inform any person of his or her potential rights pursuant to Section 24 regarding unpaid wages.[31] The Act also authorizes the Attorney General (AG) to bring a civil action to enforce these provisions. The AG may seek injunctive relief, and for willful violations, may seek to impose a fine of $1,000 per violation, payable to the state.[32]

As it relates to the federal minimum wage and the FLSA, the Act specifies that:[33]

- **Only those individuals entitled to receive the federal minimum wage under the FSLA, and its implementing regulations, are eligible to receive the state minimum wage; and**

[28] Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.
[29] S. 448.110(10), F.S. HB 5 (2023) renames the Department of Economic Opportunity as the Department of Commerce; SB 82 (2024), section 220, makes this conforming change in the Florida Minimum Wage Act.
[30] S. 448.110(3), F.S.
[31] S. 448.110(6), F.S.
[32] S. 448.110(7), F.S.
[33] S. 448.110(3), F.S.

- **Provisions related to federal minimum wage exemptions in the FLSA are considered incorporated in the Act.**

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/HB 433	Esposito	Trumbull	Became law on July 1, 2024 and implementation began on September 30, 2026.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Industries & Professional Activities Subcommittee	10 Y, 5 N	3/12/2025	Anstead	Thompson
Careers & Workforce Subcommittee	12 Y, 4 N, As CS	3/25/2025	Kiner	Kiner
THE CHANGES ADOPTED BY THE COMMITTEE:	• Clarified the employee's decision to opt-out must be voluntary and that an employer may not coerce an employee to opt-out or condition an offer of employment on the employee's decision to opt-out. • Clarified the opt-out provision applies to the state minimum wage only and that an employer must pay an employee at or above the federal minimum wage. • Included a provision requiring parental consent for an employee younger than 18 years of age to opt-out of the state minimum wage. • Included a provision limiting an employee's opt-out to the first 12 months after the date his or her employment begins. • Included a severability clause.			
Commerce Committee			Hamon	Thompson

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

A bill to be entitled

An act relating to minimum wage requirements; amending s. 448.110, F.S.; providing that an employer is not subject to state minimum wage requirements for specified employees; authorizing employees to voluntarily opt out of the state minimum wage requirements by signing a waiver; prohibiting an employer from taking certain actions; requiring a parent or guardian to sign the waiver on the employee's behalf if the employee is a minor; requiring employers to pay an employee at or above the federal minimum wage; providing that an employee's waiver to opt out of the state minimum wage is only valid for a specified timeframe; providing severability; providing an effective date.

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

Section 1. Subsection (3) of section 448.110, Florida Statutes, is amended to read:

448.110 State minimum wage; annual wage adjustment; enforcement.—

(3)(a) Employers shall pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under

CODING: Words stricken are deletions; words underlined are additions.

the federal Fair Labor Standards Act, as amended, and its implementing regulations shall be eligible to receive the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein.

(b) An employer is not subject to the state minimum wage requirements of this section for an employee who is in a structured work-study, internship, preapprenticeship, or other similar work-based learning opportunity and who opts out of receiving the minimum wage.

(c) An employee may opt out of receiving the state minimum wage by voluntarily signing a waiver of his or her right to the state minimum wage established under this subsection. The waiver must state that the employee acknowledges his or her right to the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section and that the employee is knowingly and voluntarily choosing to receive a lesser amount for his or her work-based learning opportunity as described in paragraph (b). An employer may not coerce an employee to opt out or condition an offer of employment on the employee's opting out. If the employee is younger than 18 years of age, the employee's parent or guardian must sign the waiver on behalf of the employee.

(d) Except as provided in paragraphs (b) and (c), an employer must pay an employee a wage at or above the federal minimum wage.

(e) An employee's waiver to opt out of the state minimum wage under this subsection is only valid for 12 months after the date his or her employment with the employer begins. Thereafter, the employee must be paid at or above the state minimum wage regardless of his or her position or job title with the employer.

(f) If any provision of this subsection or its application to any person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of the other provisions or applications of this subsection.

Section 2. This act shall take effect July 1, 2025.

COMMERCE COMMITTEE

CS/HB 541 by Rep. Chamberlin
Minimum Wage Requirements

AMENDMENT SUMMARY
April 7, 2025

Amendment 1 by Rep. Chamberlin (lines 37-50):

- Prohibits the work-based learning opportunities in the bill from lasting more than 9 months or two semesters.
- Limits the length of the waiver of the right to the state minimum wage to only 9 months from the date of employment.
- Removes from the bill the prohibition of employers from conditioning a job offer on the employee opting out of the state minimum wage.
- Clarifies the parental signature requirement for waivers for minors.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Chamberlin offered the following:

Amendment (with title amendment)

Remove lines 37-55 and insert:

receiving the minimum wage. However, such work-based learning opportunity may not last more than 9 months or 2 full-time semesters consisting of at least 15 credit hours each.

(c) An employee may opt out of receiving the state minimum wage by voluntarily signing a waiver of his or her right to the state minimum wage established under this subsection. The waiver must state that the employee acknowledges his or her right to the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section and that the employee is knowingly and voluntarily choosing to receive a lesser amount for his or her work-based learning opportunity as described in paragraph

(b). An employer may not coerce an employee to opt out of receiving the state minimum wage. If the employee is younger than 18 years of age, in order for the waiver to be effective, the employee's parent or guardian must have agreed and signed the waiver on behalf of the employee at the minor employee's request.

(d) Except as provided in paragraphs (b) and (c), an employer must pay an employee a wage at or above the federal minimum wage.

(e) An employee's waiver to opt out of the state minimum wage under this subsection is only valid for 9 months after the

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

Remove lines 5-10 and insert:
specified employees; specifying certain timeframes; authorizing employees to voluntarily opt out of the state minimum wage requirements by signing a waiver; prohibiting an employer from coercing an employee from opting out of the state minimum wage; authorizing a parent or guardian to agree and sign the waiver at the minor employee's request;

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: HB 703	**COMPANION BILL:** CS/SB 818 (McClain)
TITLE: Utility Relocation	**LINKED BILLS:** None
SPONSOR(S): Robinson, W.	**RELATED BILLS:** None

Committee References

Economic Infrastructure
18 Y, 0 N

➤

Commerce

SUMMARY

Effect of the Bill:

The bill modifies the process under which utility owners must relocate facilities located in a public right-of-way by:

- Requiring utility owners, within 30 days after written notice from a public right-of-way authority, to submit a "reasonable" schedule for relocation of their facilities located within the right-of-way;
- Extending the time allowed for utility owners to begin relocation work from 30 days to 60 days; and
- For relocation of utilities used to provide broadband Internet, cable, and video service, shifting cost responsibility from the utility owner to the right-of-way authority that requires such relocation.

Fiscal or Economic Impact:

The bill will have an indeterminate but likely significant negative impact on state and local government expenditures.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill modifies the process under which utilities located within the right-of-way (ROW) limits of any public road or publicly owned rail corridor must be relocated upon request of the government entity that has jurisdiction and control over the road or rail corridor. These government entities, referred to as "authorities," include the Department of Transportation and local governments.

Specifically, the bill requires a utility owner, within 30 days after written notice from an authority that the utility is interfering with the use, maintenance, improvement, extension, or expansion of a public road or rail corridor, to provide the authority with a reasonable relocation schedule to expedite completion of the authority's construction of maintenance project. The bill extends the time allowed for a utility owner to initiate work to alleviate the interference from 30 days after written notice to 60 days after written notice from the authority.

The bill also creates an exception to the general requirement that the utility owner is responsible for the expense of relocating its utilities. If an authority requires a provider of broadband Internet[1], cable, or video service[2] to relocate a utility used to provide such service, the bill provides that the utility owner must perform the necessary work but that the authority must pay the entire expense attributable to the work. (Section 1)

The bill amends a cross-reference to conform to these changes. (Section 2)

[1] The bill provides that "broadband Internet service" has the same meaning as provided in s. 288.9961(2), F.S., which defines the term as "a service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second downstream and 3 megabits per second upstream."

[2] The bill provides that "cable service provider" and "video service provider" have the same meaning as provided in s, 610.103, F.S.

The effective date of the bill is July 1, 2025. (Section 3)

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill will have an indeterminate but likely significant negative impact on state government expenditures associated with transportation projects due to the transfer of cost responsibility for relocation of broadband Internet, cable, and video service facilities located within the right-of-way limits of roads and rail corridors under the jurisdiction and control of the Department of Transportation.[3]

LOCAL GOVERNMENT:

The bill will have an indeterminate but likely significant negative impact on local government expenditures associated with transportation projects due to the transfer of cost responsibility for relocation of broadband Internet, cable, and video service facilities located within the right-of-way limits of roads and rail corridors under the jurisdiction and control of local government entities.

PRIVATE SECTOR:

The bill will eliminate facility relocation costs for providers of broadband Internet, cable, and video service when such facilities are located within the right-of-way limits of roads and rail corridors under the jurisdiction and control of the Department of Transportation or a local government entity.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Utility Use of the Public Right-of-Way

The Department of Transportation (DOT) and each local government that has jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe and enforce reasonable rules or regulations related to placing and maintaining utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridors under its jurisdiction. Each of these types of government entities is individually referred to as an "authority" when acting in this capacity.[4]

Each ROW authority may authorize any person who is a resident of this state, or any corporation organized under the laws of this state or licensed to do business within this state, to use a public ROW for a utility in accordance with the authority's rules or regulations. For purposes of obtaining such use, a "utility" includes:

- Electric transmission lines
- Voice, telegraph, data, or other communications services lines
- Wireless facilities
- Poles and pole lines
- Railways
- Ditches
- Sewers
- Water, heat, or gas mains
- Pipelines
- Fences
- Gasoline tanks and pumps
- Any other structures referred to in ss. 337.401–337.404, F.S.[5]

[3] An agency analysis of this bill was requested from the Department of Transportation on March 4, 2025, and as of the date of publication has not been received.
[4] S. 337.401(1), F.S.
[5] *Id.*

A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit. However, for public roads or publicly owned rail corridors under DOT's jurisdiction, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit.[6]

If a public ROW authority finds that a utility placed within the ROW limits of a public road or publicly owned rail corridor is unreasonably interfering in any way with the use, maintenance, improvement, extension, or expansion of the road or rail corridor, it must notify the utility or its agent in writing. Within 30 days of such notice, the utility owner must initiate the work necessary to alleviate the interference at its own expense.[7] The work must be completed within a reasonable time as stated in the notice or a time agreed to by the authority and utility owner.[8]

Additional Relevant Information

Art. VII, s. 18(a), of the Florida Constitution states that a county or municipality is not bound by a general law that requires the county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and:

- Funds are appropriated to cover the estimated expenditure;
- The legislature provides authority for the county or municipality, by a simply majority vote, to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate funds to cover the estimated expenditure;
- The law requiring the expenditure is approved by two-thirds of the membership in each house of the legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Economic Infrastructure Subcommittee	18 Y, 0 N	3/12/2025	Keating	Bauldree
Commerce Committee			Hamon	Bauldree

[6] S. 337.401(2), F.S.
[7] S. 337.401(1), F.S. This law provides a list of specific scenarios in which responsibility for relocation expenses is modified.
[8] *Id.*

A bill to be entitled

An act relating to utility relocation; amending s. 337.403, F.S.; requiring utility owners to provide a certain authority with utility relocation schedules within a certain timeframe to expedite work; revising the timeframe within which a utility owner must initiate work; requiring a service provider to perform work under specific circumstances; requiring the authority to pay relocation expenses in certain instances; amending s. 125.42, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by utility; expenses.—

(1) If a utility that is placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, the utility owner shall, within 30 days after ~~upon 30 days'~~ written notice to the utility or its agent by the authority, provide the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

authority a reasonable utility relocation schedule to expedite the completion of the authority's construction or maintenance project identified in the notice, and, within 60 days after the written notice from the authority, initiate the work necessary to alleviate the interference at its own expense except as provided in paragraphs (a)-(k) ~~(a)-(j)~~. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner.

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, is necessitated by the construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of the project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal-Aid Highway Act, or any amendment thereof, then in that event the utility owning or operating such facilities shall perform any necessary work upon notice from the department, and the state shall pay the entire expense properly attributable to such work after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility.

(b) When a joint agreement between the department and the utility is executed for utility work to be accomplished as part of a contract for construction of a transportation facility, the department may participate in those utility work costs that

exceed the department's official estimate of the cost of the work by more than 10 percent. The amount of such participation is limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility work to be accomplished in advance of a contract for construction of a transportation facility, the department may participate in the cost of clearing and grubbing necessary to perform such work.

(d) If the utility facility was initially installed to exclusively serve the authority or its tenants, or both, the authority shall bear the costs of the utility work. However, the authority is not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others. For a county or municipality, if such utility facility was installed in the right-of-way as a means to serve a county or municipal facility on a parcel of property adjacent to the right-of-way and if the intended use of the county or municipal facility is for a use other than transportation purposes, the obligation of the county or municipality to bear the costs of the utility work shall extend

only to utility work on the parcel of property on which the facility of the county or municipality originally served by the utility facility is located.

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

(f) If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past 5 years, the department shall incur all costs of the necessary utility work.

(g) An authority may bear the costs of utility work required to eliminate an unreasonable interference when the utility is not able to establish that it has a compensable property right in the particular property where the utility is located if:

1. The utility was physically located on the particular

property before the authority acquired rights in the property;

2. The utility demonstrates that it has a compensable property right in adjacent properties along the alignment of the utility or, after due diligence, certifies that the utility does not have evidence to prove or disprove that it has a compensable property right in the particular property where the utility is located; and

3. The information available to the authority does not establish the relative priorities of the authority's and the utility's interests in the particular property.

(h) If a municipally owned utility or county-owned utility is located in a rural area of opportunity, as defined in s. 288.0656(2), and the department determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

(i) If the relocation of utility facilities is necessitated by the construction of a commuter rail service project or an intercity passenger rail service project and the cost of the project is eligible and approved for reimbursement by the Federal Government, then in that event the utility owning or operating such facilities located by permit on a department-owned rail corridor shall perform any necessary utility

relocation work upon notice from the department, and the department shall pay the expense properly attributable to such utility relocation work in the same proportion as federal funds are expended on the commuter rail service project or an intercity passenger rail service project after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility. In no event shall the state be required to use state dollars for such utility relocation work. This paragraph does not apply to any phase of the Central Florida Commuter Rail project, known as SunRail.

(j) If a utility is lawfully located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise, the authority must bear the cost of the utility work required to eliminate an unreasonable interference. The authority shall pay the entire expense properly attributable to such work after deducting any increase in the value of a new facility and any salvage value derived from an old facility.

(k) If the authority requires a provider of broadband Internet service as defined in s. 288.9961(2), or a cable service provider or video service provider as defined in s. 610.103, to relocate a facility used to provide such service, the service provider owning or operating such facility shall perform any necessary work upon notice from the authority, and

the authority requiring such relocation shall pay the entire expense properly attributable to such work.

Section 2. Subsection (5) of section 125.42, Florida Statutes, is amended to read:

125.42 Water, sewage, gas, power, telephone, other utility, and television lines within the right-of-way limits of county roads and highways.—

(5) In the event of widening, repair, or reconstruction of any such road, the licensee shall move or remove such water, sewage, gas, power, telephone, and other utility lines and television lines at no cost to the county should they be found by the county to be unreasonably interfering, except as provided in s. 337.403(1)(d)-(k) ~~s. 337.403(1)(d)-(j)~~.

Section 3. This act shall take effect July 1, 2025.

COMMERCE COMMITTEE

HB 703 by Rep. Robinson, W.
Utility Relocation

AMENDMENT SUMMARY
April 7, 2025

Amendment 1 by Rep. Robinson, W. (strike-all):

- Expands application of the bill's cost responsibility provisions to all providers of communications services subject to the communications services tax.
- Applies existing provisions of the bill relating to the initiation of relocation work only to providers of communications services.
- Provides a legislative finding of an important state interest.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee
Representative Robinson, W. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 337.403, Florida Statutes, is amended to read:

337.403 Interference caused by utility; expenses.—

(1) If a utility that is placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor is found by the authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, the utility owner shall, within 30 days after ~~upon 30 days'~~ written notice to the utility or its agent by the authority, initiate the work

necessary to alleviate the interference at its own expense except as provided in paragraphs (a)-(k) ~~(a)-(j)~~. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority and the utility owner.

(a) If the relocation of utility facilities, as referred to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, is necessitated by the construction of a project on the federal-aid interstate system, including extensions thereof within urban areas, and the cost of the project is eligible and approved for reimbursement by the Federal Government to the extent of 90 percent or more under the Federal-Aid Highway Act, or any amendment thereof, then in that event the utility owning or operating such facilities shall perform any necessary work upon notice from the department, and the state shall pay the entire expense properly attributable to such work after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility.

(b) When a joint agreement between the department and the utility is executed for utility work to be accomplished as part of a contract for construction of a transportation facility, the department may participate in those utility work costs that exceed the department's official estimate of the cost of the work by more than 10 percent. The amount of such participation is limited to the difference between the official estimate of

all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract for such work. The department may not participate in any utility work costs that occur as a result of changes or additions during the course of the contract.

(c) When an agreement between the department and utility is executed for utility work to be accomplished in advance of a contract for construction of a transportation facility, the department may participate in the cost of clearing and grubbing necessary to perform such work.

(d) If the utility facility was initially installed to exclusively serve the authority or its tenants, or both, the authority shall bear the costs of the utility work. However, the authority is not responsible for the cost of utility work related to any subsequent additions to that facility for the purpose of serving others. For a county or municipality, if such utility facility was installed in the right-of-way as a means to serve a county or municipal facility on a parcel of property adjacent to the right-of-way and if the intended use of the county or municipal facility is for a use other than transportation purposes, the obligation of the county or municipality to bear the costs of the utility work shall extend only to utility work on the parcel of property on which the facility of the county or municipality originally served by the utility facility is located.

(e) If, under an agreement between a utility and the authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority, without the agreement expressly addressing future responsibility for the cost of necessary utility work, the authority shall bear the cost of removal or relocation. This paragraph does not impair or restrict, and may not be used to interpret, the terms of any such agreement entered into before July 1, 2009.

(f) If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past 5 years, the department shall incur all costs of the necessary utility work.

(g) An authority may bear the costs of utility work required to eliminate an unreasonable interference when the utility is not able to establish that it has a compensable property right in the particular property where the utility is located if:

1. The utility was physically located on the particular property before the authority acquired rights in the property;

2. The utility demonstrates that it has a compensable property right in adjacent properties along the alignment of the

utility or, after due diligence, certifies that the utility does not have evidence to prove or disprove that it has a compensable property right in the particular property where the utility is located; and

3. The information available to the authority does not establish the relative priorities of the authority's and the utility's interests in the particular property.

(h) If a municipally owned utility or county-owned utility is located in a rural area of opportunity, as defined in s. 288.0656(2), and the department determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by a department project on the State Highway System, the department may pay, in whole or in part, the cost of such utility work performed by the department or its contractor.

(i) If the relocation of utility facilities is necessitated by the construction of a commuter rail service project or an intercity passenger rail service project and the cost of the project is eligible and approved for reimbursement by the Federal Government, then in that event the utility owning or operating such facilities located by permit on a department-owned rail corridor shall perform any necessary utility relocation work upon notice from the department, and the department shall pay the expense properly attributable to such utility relocation work in the same proportion as federal funds

are expended on the commuter rail service project or an intercity passenger rail service project after deducting therefrom any increase in the value of a new facility and any salvage value derived from an old facility. In no event shall the state be required to use state dollars for such utility relocation work. This paragraph does not apply to any phase of the Central Florida Commuter Rail project, known as SunRail.

(j) If a utility is lawfully located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority by dedication, transfer of fee, or otherwise, the authority must bear the cost of the utility work required to eliminate an unreasonable interference. The authority shall pay the entire expense properly attributable to such work after deducting any increase in the value of a new facility and any salvage value derived from an old facility.

(k) If the authority requires a provider of communications services that are subject to the Communications Services Tax Simplification Law of chapter 202 to relocate a facility used to provide such communications services, upon written notice by the authority of such a need to relocate facilities, the communications service provider owning or operating such facility shall provide the authority a reasonable utility relocation schedule to expedite the completion of the authority's construction or maintenance project identified in

the notice, and, within 60 days after the written notice from the authority, initiate any necessary work. The authority requiring such relocation shall pay the entire expense properly attributable to such work.

Section 2. Subsection (5) of section 125.42, Florida Statutes, is amended to read:

125.42 Water, sewage, gas, power, telephone, other utility, and television lines within the right-of-way limits of county roads and highways.—

(5) In the event of widening, repair, or reconstruction of any such road, the licensee shall move or remove such water, sewage, gas, power, telephone, and other utility lines and television lines at no cost to the county should they be found by the county to be unreasonably interfering, except as provided in s. 337.403(1)(d)-(k) ~~s. 337.403(1)(d)-(j)~~.

Section 3. The Legislature finds and declares that this act fulfills an important state interest.

Section 4. This act shall take effect July 1, 2025.

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

Remove everything before the enacting clause and insert:

An act relating to utility relocation; amending s. 337.403, F.S.; revising the timeframe within which certain utility owners must initiate work; requiring a

communications service provider to perform work under specific circumstances; requiring specified utility owners to provide a certain authority with utility relocation schedules within a certain timeframe to expedite work; requiring the authority to pay relocation expenses in certain instances; amending s. 125.42, F.S.; conforming a cross-reference; providing a finding and declaration of important state interest; providing an effective date.

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 867 **TITLE:** Indemnification and Insurance Obligations of Commuter Rail Transportation Providers **SPONSOR(S):** Lopez, V.	**COMPANION BILL:** CS/SB 916 (Rodriguez) **LINKED BILLS:** None **RELATED BILLS:** None

Committee References

Economic Infrastructure	➤	Civil Justice & Claims	➤	Commerce
18 Y, 0 N, As CS		13 Y, 0 N		

SUMMARY

Effect of the Bill:

The bill establishes the Coastal Link Commuter Rail Service Act. Under the bill, a state, county, municipality, district, authority, or other separate unit of government that has entered into an agreement with Brightline to operate commuter rail service on the Coastal Link corridor may assume indemnification and insurance obligations in certain circumstances. Thus, the bill provides a legal framework for suits involving incidents which arise from commuter rail services along the Coastal Link Corridor.

Fiscal or Economic Impact:

None.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill creates s. 343.811, F.S., referred to as the Coastal Link Commuter Rail Service Act. Under the bill, a state, county, municipality, district, authority, or other separate unit of government that has entered into an agreement with Brightline to operate commuter rail service on the Coastal Link corridor may assume indemnification and insurance obligations in certain circumstances. (Section 1).

Assumption of Obligations

The bill provides that in association with the development or operation of a commuter rail service on the Coastal Link corridor, an agency may assume certain obligations.

The bill states that an agency may assume obligations by contract to protect, defend, indemnify, and hold harmless both Florida East Coast Railway (FECR), Brightline, and either entity's officers, agents, and employees from and against:

- Any liability, cost, and expense, including, but not limited to, the agency's passengers and other rail corridor invitees on the Coastal Link corridor, regardless of whether the loss, damage, destruction, injury, or death is caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of such freight rail operator or Brightline, its successors, or its officer, agents, and employees, or any other person.
- Any loss, injury, or damages incurred by other rail corridor invitees up to a self-insurance retention amount of $5 million with respect to limited covered accidents caused by the agency. (Section 2).

The bill provides that an agency may not contract to assume liability in any instance that exceeds the following parameters of allocation of risk:

- The agency may be solely responsible for any loss, injury, or damage to the agency's passengers, or rail corridor invitees, third parties, or trespassers, regardless of circumstances or cause, subject to the other provisions of the bill.
- In the event of a limited covered accident caused by FECR or Brightline, the authority of an agency to protect, defend, and indemnify FECR or Brightline for all liability, cost, and expense, including punitive or exemplary damages, in excess of the self-insurance retention amount exists only if FECR or Brightline agrees, with respect to such accident, to protect, defend, and indemnify the agency for the amount of the self-insurance retention amount. (Section 2).

Under the bill, when only one train is involved in an incident, including an incident with trespassers or at-grade crossings, and the train is an agency train, the agency may be solely responsible for any loss, injury, or damage. When only one train is involved in an incident and the train belongs to either FECR or Brightline, the owning entity is solely responsible for any loss, injury, or damage, except for the agency's passengers and other rail corridor invitees, which are the responsibility of the agency. The entity's passengers and other rail corridor invitees are the responsibility of the entity. (Section 2).

The bill states that when an incident involves more than one operator, each operator is responsible for:

- Its property, passengers, employees (excluding employees who are, at the time of the incident, rail corridor invitees of another operator), and other rail corridor invitees.
- Its proportionate share of any loss or damage to the joint infrastructure.
- Its proportionate share of any loss, injury, or damage to rail corridor invitees who are not rail corridor invitees of operators[1] and trespassers or third parties outside the Coastal Link corridor as a result of the incident. (Section 2).

Under the bill, any contractual duty of an agency to protect, defend, indemnify, and hold harmless FECR or Brightline with respect to claims by rail passengers must expressly include a cap which may not exceed $323 million per occurrence, unless legislative approval is provided. This amount must be adjusted in accordance with the federal limitation on rail passenger transportation liability, 49 U.S. Code § 28103, or any successor provision. (Section 2).

The bill states that the liabilities of the agency to the state or any other agency shall be as set forth in an agreement among such entities and limited by s. 768.28(19), F.S. (Section 2).

Purchase of Insurance

Additionally, the bill provides that in association with the development or operation of a commuter rail service on the Costal Link corridor, an agency may purchase liability insurance. (Section 2).

Under the bill, if an agency purchases liability insurance, the insured amount may not exceed $323 million per occurrence. This amount will be adjusted in accordance with the aggregate allowable award to all rail passengers, against all defendants, for all claims, including punitive damages, arising from a single accident or incident under the federal limitation on rail passenger transportation liability, 49 U.S. Code § 28103, and any successor provisions. (Section 2).

The bill provides that an agency may also establish a self-insurance retention fund for the purpose of paying the deductible limit for the insurance policies the agency may obtain, including coverage for a county agency, freight rail operators that access the Coastal Link corridor pursuant to a contract with FECR, Brightline, commuter rail service providers, governmental entities, or any ancillary development. The bill provides that any self-insurance retention fund or deductible may not exceed the self-insurance retention amount of $5 million. (Section 2).

[1] The bill provides that the agency shall always be responsible for its passengers and its rail corridor invitees regardless of whether the agency was involved in the incident.

The bill states that if an agency elects to purchase liability insurance, such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to compensatory, special, and exemplary damages. The insurance and self-insurance retention fund may be maintained to provide adequate funds to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of the Coastal Link corridor. (Section 2).

Any self-insured retention account obtained in accordance with the provisions of the bill must be a segregated account of the agency and must be subject to the same conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of liability insurance purchased under the bill. (Section 2).

Sovereign Immunity

The bill provides that the purchase of insurance, the establishment of a self-insurance retention fund, and the assumption by contract to protect, defend, indemnify, and hold harmless may not be deemed a waiver of any defense of sovereign immunity for tort claims or deemed to increase the limits of the agency's liability for tort claims provided under current law. (Section 2).

The bill clarifies that unless specifically provided by law, FECR and Brightline, and their respective officers, agents, and employees, are not officers, employees, or subdivisions of the state and are not entitled to sovereign immunity. (Section 2).

Definitions Provided Under the Bill

The bill defines "agency" as a state, county, municipality, district, authority, or other separate unit of government created or established by law which has entered into an agreement with Brightline allowing the government entity to operate commuter rail service on the Coastal link corridor. (Section 2).

Under the bill, "Brightline" means Brightline Trains Florida, LLC, or its successors and assigns, or any of its affiliates that is a party to an agreement with an agency in connection with the Coastal Link corridor. The bill states that for the purposes of its status as an indemnitee, "Brightline" include Florida East Coast Dispatch, LLC. (Section 2).

The bill defines the "Coastal Link corridor" as the rail transit system, including the intercity passenger rail service stations and vehicle maintenance facilities, located on or adjacent to the Florida East Coast Railway (FECR) and Brightline rail corridor in Miami-Dade County, Broward County, and Palm Beach County.[2] (Section 2).

Under the bill, "commuter rail service" means the operation of a train transporting passengers[3] and making frequent stops within urban areas and the immediate suburbs along the rail corridor for the purpose of transporting passengers, including boarding and alighting and the nonrevenue movement of passenger trains for

[2] The bill states that the "Coastal Link corridor" includes structures essential to railroad operations, including land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purpose of construction, operation, or maintenance of a railroad that provides rail service.

[3] The bill states that, with respect to intercity passenger rail service or commuter rail service, "passenger" means a person, ticketed or unticketed, using the rail service on the Costal Link corridor:

- Onboard trains, locomotives, rail cars, or rail equipment employed in such intercity passenger rail service or commuter rail service or boarding or alighting therefrom;
- On or about the Coastal Link corridor for any purpose related to such intercity passenger rail service or commuter rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or
- Meeting, assisting, or in the company of a person described in subparagraph 1. or subparagraph 2.

storage, maintenance, or repairs. The bill states that the term does not include the operation of trains by Brightline transporting passengers in intercity passenger rail service between Brightline stations[4]. (Section 2).

Under the bill, "FECR" means the Florida East Coast Railway, LLC, or its successors and assigns. For the purposes of its status as an indemnitee, the term "FECR" includes Florida East Coast Dispatch, LLC, or its successors and assigns. (Section 2).

The bill defines "intercity passenger rail service" as all passenger service on the Coastal Link corridor other than commuter rail service and is characterized by trains making less frequent stops along the Coastal Link corridor that the commuter rail service makes. (Section 2).

Under the bill, "joint infrastructure" means any portion or segment of the Coastal Link corridor which does not contain tracks or infrastructure designated for the exclusive use of one operator.[5] (Section 2).

"Limited covered accident" is defined in the bill as a collision directly between the trains, locomotives, rail cars, or rail equipment of more than one operator on the Costal Link corridor, where the collision is caused by or arising from the willful misconduct of one of the responsible operators[6], as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of the responsible operator, as adjudicated pursuant to a final and unappealable court order. (Section 2).

Under the bill, the term "operator" includes:

- Brightline, including any passenger rail operators that access the Coastal Link corridor pursuant to a contract with Brightline, other than an agency;
- FECR, including Amtrak or any freight rail operators that access the Coastal Link corridor pursuant to a contract with FERC;
- An agency, including any commuter rail operators that access the Coastal Link corridor pursuant to a contract with an agency; or
- The South Florida Regional Transportation Authority (SFRTA), with respect to its operation contemplated under s. 343.545, F.S. (Section 2).

The bill defines "proportionate share" as, with respect to a loss, injury, or damage for which operators share responsibility, a percentage in proportion to the number of operators involved in the relevant incident.

- When one or more agencies are jointly operating a commuter rail service, such agencies are considered a single operator for the purposes of computing and assessing the proportionate share.
- When two operators are involved in the incident, each is responsible for one-half of such loss, injury, or damage; when three operators are involved in the incident, each is responsible for one-third, and so on.
- When more than one agency shares responsibility with respect to loss, injury, or damage, each agency is considered a separate entity for purposes of determining its proportionate share. (Section 2).

Under the bill, "rail corridor invitee" means a passenger who is on or about the Coastal Link corridor or a person otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of an operator. The bill states that this term does not include patrons at any station who are not also passengers, commercial or residential tenants at any station or the developments in and around the stations or their invitees, or third parties performing work at a station or in the Coastal Link corridor, including any utilities or fiber optic companies. The bill further provides that:

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[4] For the purpose of the "commuter rail service" definition, the bill states that "Brightline stations" means the Brightline-owned intercity passenger rail service stations in Miami located near Aventura, Fort Lauderdale, Boca Raton, and West Palm Beach, as well as any future stations developed by Brightline in connection with its intercity passenger rail service.

[5] Train stations, including, but not limited to, pedestrian bridges, stairs, or conveyance systems, do not constitute part of the joint infrastructure.

[6] The bill states that for the purpose of the definition of "limited covered accident," "responsible operator" means an operator or its subsidiaries, agents, licenses, employees, officers, or directors which has caused a collision as a result of willful misconduct.

- A rail corridor invitee of an agency may not be considered an invitee of Brightline or FECR.
- A rail corridor invitee of Brightline or FECR may not be considered an invitee of an agency.
- An employee of an operator is not a rail corridor invitee of such operator at any time the employee is a passenger or is otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of another operator.
- When a passenger is transferring from the service of one operator to another, the passenger is a rail corridor invitee of the first operator until the passenger has left the first operator's platform, at which time the passenger is then a rail corridor invitee of the other operator. (Section 2).

The bill reenacts existing law, s. 341.302(17), F.S., for the purpose of incorporating changes made by the bill. (Section 3).

The effective date of the bill is July 1, 2025. (Section 4).

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Rail Service in Florida

The Florida Department of Transportation (DOT) must develop and implement a rail program designed to ensure its proper maintenance, safety, revitalization, and expansion to assure its continued and increased availability, and to respond to statewide mobility needs. DOT's statutory rail requirements include:

- Providing the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to mobility needs.
- Promoting and facilitating the implementation of advanced rail systems.
- Developing and administering state standards concerning the safety and performance of rail systems.[7]

Most of Florida's rail mileage is owned by freight railroads. Roughly 60 percent of the rail mileage in the state is owned by CSX Transportation, Inc., (CSX) and Florida East Coast Railway (FECR). The remaining rail mileage in the state is owned by Norfolk Southern Railway, short lines railroads, and the state of Florida.[8]

In 1988, DOT and CSX entered into an agreement whereby DOT purchased approximately 81 miles of CSX track and right-of-way[9] in order to operate commuter rail in South Florida.[10] The commuter rail system, known as Tri-Rail, operates in Miami-Dade, Broward, and Palm Beach counties.[11]

Brightline

Brightline Trains Florida (Brightline) is the only privately owned and operated intercity railroad in the United States.[12] Brightline operates hourly intercity passenger rail service on a 235-mile corridor between Miami and Orlando.[13] Brightline is also actively planning a further extension from Orlando to Tampa.[14] As of July 2024,

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[7] S. 341.302, F.S.
[8] *Florida Rail System Plan, Executive Summary* (Nov. 2023) at 3, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/plans/rail/rail-system-plan-2023/rsp-october-version/fdot_rsp_ch-1_ada-(nov).pdf?sfvrsn=606135b_4 (last visited Mar. 11, 2025).
[9] This is commonly known as the South Florida Rail Corridor. FDOT *Florida Freight & Passenger Rail Plan,* 2-1 n. 1:, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/publications/plans/rail/06visionplan/flrail06.pdf?sfvrsn=ce111160_0 (last visited March 12, 2025).
[10] *Id.* at 5-34.
[11] Tri-Rail System Map, https://www.tri-rail.com/ (last visited March 12, 2025)
[12] Brightline, *About Us*, https://www.gobrightline.com/about (last visited Mar. 11, 2025).
[13] Florida Rail System Plan, *Executive Summary* (Nov. 2023) at 5, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/plans/rail/rail-system-plan-2023/rsp-october-version/fdot_rsp_ch-1_ada-(nov).pdf?sfvrsn=606135b_4 (last visited Mar. 11, 2025).
[14] *Id*. at 6.

Brightline offers sixteen daily round trips between South Florida and Orlando, departing from the Orlando International Airport and ending in Miami with stops in West Palm Beach, Boca Raton, Fort Lauderdale, and Aventura.[15]

Florida East Coast Railway (FECR)

FECR is a regional railroad in Florida which owns all 351-mile mainline track from Jacksonville to Miami. The railway connects to the national railway system in Jacksonville, allowing it to provide rail service in and out of Georgia, Tennessee, South Carolina, and North Carolina. FECR is the exclusive rail provider for Port Miami, Port Everglades, and Port of Palm Beach.[16]

Coastal Link Commuter Rail Service

Since 2021, DOT and Broward County Transit have been evaluating the implementation of commuter rail along the FECR corridor from Aventura in Miami-Dade County into Broward County. This evaluation is a direct result of a previous study known as the "Coastal Link" that evaluated 85 miles of commuter rail in Miami-Dade, Broward, and Palm Beach counties.[17]

In August 2022, the Broward County Commission adopted a Locally Preferred Alternative for Broward Commuter Rail South (BCR South) to extend commuter rail service on the FECR corridor from Aventura north to Fort Lauderdale. In February 2023, the Broward Metropolitan Planning Organization voted to amend its Metropolitan Transportation Plan to include BCR South as a Priority I project within the fiscally constrained portion of the plan, with project development funding programmed and approved by both Broward County and DOT in 2022.[18]

Miami-Dade County is also studying the implementation of commuter rail service in the FECR corridor from Downtown Miami to Aventura, known as the Northeast Corridor.[19] The Northeast Corridor will establish a new rapid transit route from Miami Central Station in downtown Miami to West Aventura Station, utilizing the existing railroad corridor shared with Brightline and freight rail services. This project will utilize Brightline's existing stations and add five additional stations.[20]

DOT Rail Liability

DOT is authorized to implement a statewide rail program.[21] In the event of an accident in a DOT-owned rail corridor, DOT may assume detailed obligations to specific parties who may be involved.[22] These provisions relate to DOT trains, the National Railroad Passenger Corporation (AMTRAK) trains, and freight trains. DOT may agree to assume the obligations to indemnify and insure, pursuant to s. 343.545, F.S., freight rail service, intercity passenger rail service, and commuter rail service on a DOT-owned rail corridor, whether the ownership is in fee or by easement, or on a rail corridor where DOT has the right to operate.[23]

DOT's duty to indemnify a freight rail operator or Amtrak is capped at $200 million.[24] DOT is required to purchase up to $200 million in liability insurance and establish a self-insurance retention fund to cover

[15] Megan Dubois, *Taking the Brightline Train from Orlando to Boca Raton: Here's What It's Like*, Condé Nast Traveler (July 18, 2024), https://www.cntraveler.com/story/brightline-train-orlando-to-boca-raton (last visited Mar. 11, 2025).
[16] Florida East Coast Railway, *Who We Are*, https://fecrwy.com/ (last visited Mar. 11, 2025).
[17] Florida Department of Transportation, *Broward Commuter Rail South*, https://www.fdot.gov/projects/broward-commuter-rail-south/home (last visited March 11, 2025)
[18] *Id.*
[19] *Id.*
[20] Miami-Dade County, Northeast Corridor, https://www.miamidade.gov/global/transportation/smart-plan-northeast-corridor.page (last visited March 11, 2025).
[21] S. 341.302, F.S.
[22] S. 341.302(17), F.S.
[23] S. 341.302(17)(d), F.S.
[24] S. 341.302(17)(a)6., F.S.

any deductible, provided that any parties covered under the insurance must pay a reasonable monetary contribution to cover the cost of the insurance.[25] The self-insurance fund or deductible is capped at $10 million.[26] Neither the purchase of insurance nor the establishment of a self-insurance retention fund constitutes a waiver of sovereign immunity.[27]

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.[28] Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, Florida law allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment.[29] This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under s. 768.28, F.S., applies only to "injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment."[30]

Section 768.28(5), F.S., caps tort recovery from a governmental entity at $200,000 per person and $300,000 per incident.[31] Although a court may enter an excess judgment, a claimant may not collect more than the caps provide, absent a claim bill passed by the Legislature.[32]

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee's acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[33] A government entity is not liable for any damages resulting from actions by an employee outside the scope of his or her employment and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.[34]

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[25] *Id*.
[26] S. 341.302(17)(b), F.S.
[27] S. 341.302(17), F.S.
[28] *Sovereign immunity*, Legal Information Institute, https://www.law.cornell.edu/wex/sovereign_immunity (last visited Mar. 7, 2025).
[29] s. 768.28(1), F.S.
[30] *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.) (internal punctuation omitted).
[31] S. 768.28(5), F.S.
[32] *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).
[33] S. 768.28(9)(a), F.S.
[34] *Id*.

Political Subdivisions

A political subdivision is a separate legal entity of the State which usually has specific governmental functions.[35] Section 218.077(2)(f), F.S., defines a political subdivision as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Local governments are incorporated by special acts of the Florida Legislature and include counties, municipalities, school districts, and special districts.[36]

Some examples of different types of political subdivisions of the State of Florida include, but are not limited to:

- Cities;
- Counties;
- Municipalities;
- School boards; and
- Special districts established by the Legislature.

Federal Limitation on Rail Passenger Transportation Liability

In the event of conduct giving rise to a claim for damages or liability arising from or in connection with the provision of rail passenger transportation, federal law provides a monetary cap on awards to all rail passengers. Under 49 U.S. Code § 28103, the aggregate allowable award to all rail passengers, against all defendants, for all claims, including punitive damages, arising from a single accident or incident may not exceed $200,000,000.[37] In 2021, this cap was adjusted in accordance with inflation to $322,864,228.[38]

Tort Law

One of the goals of the civil justice system is to redress tortious conduct, or "torts." A tort is a wrong for which the law provides a remedy. Torts are generally divided into two categories, as follows:

- An intentional tort, examples of which include an assault, a battery, or a false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy, the "plaintiff," must demonstrate that the:
    - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
    - Defendant breached his or her duty of care by failing to conform to the required standard;
    - Defendant's breach caused the plaintiff to suffer an injury; and
    - Plaintiff suffered actual damage or loss resulting from such injury.[39]

Negligence

"Negligence" is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances.[40] Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.[41]

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[35] Social Security Administration, *How to Determine an Entity's Legal Status*, https://www.ssa.gov/section218training/advanced_course_9.htm#3 (last visited Feb. 11, 2025).
[36] Susan A. MacManus, et al, *Politics in Florida*, (4th ed. 2015).
[37] 49 U.S.C. § 28103 (1997).
[38] Adjustment to Rail Passenger Transportation Liability Cap, 86 Fed. Reg. 11571 (Feb. 22, 2021) (amending 49 U.S.C. § 28103).
[39] 6 *Florida Practice Series* s. 1.1; *see Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).
[40] 38 Fla. Jur 2d Negligence s. 1.
[41] Fla. Standard Jury Instruction 401.4 at 57.

Duty of Care

The first of the four elements a plaintiff must show to prevail in a negligence action is that the defendant owed the plaintiff a "duty of care" to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, "merely opens the courthouse doors."[42] Whether a duty sufficient to support a negligence claim exists is a matter of law[43] determined by the court.[44] A duty may arise from various sources, including:

- Legislative enactments or administrative regulations;
- Judicial interpretations of such enactments or regulations;
- Other judicial precedent; and
- The general facts of the case.[45]

In determining whether a duty arises from the general facts of the case, courts look to whether the defendant's conduct foreseeably created a "zone of risk" that posed a general threat of harm to others—that is, whether there was a likelihood that the defendant's conduct would result in the type of injury suffered by the plaintiff.[46] Such zone of risk defines the scope of the defendant's legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.[47] However, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must create or control the risk before liability may be imposed.[48]

Breach of the Duty of Care

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.[49]

Causation

The third element a plaintiff must prove is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Whether or not proximate causation exists is generally a matter of fact for the jury to determine.[50] Florida follows the "more likely than not" standard in proving causation; thus, the inquiry for the factfinder is whether the defendant's negligence probably caused the plaintiff's injury.[51] In making such a determination, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.[52] It is not required that the defendant's conduct must be the exclusive cause, or even the primary cause, of the plaintiff's injury suffered; instead, the plaintiff must only show that the defendant's conduct substantially caused the injury.[53]

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[42] *Kohl v. Kohl*, 149 So. 3d 127 (Fla. 4th DCA 2014).
[43] A matter of law is a matter determined by the court, unlike a matter of fact, which must be determined by the jury. Matters of law include issues regarding a law's application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Legal Information Institute, *Question of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited March 12, 2025); Legal Information Institute, *Question of Fact*, https://www.law.cornell.edu/wex/Question_of_fact (last visited March 12, 2025).
[44] *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1110 (Fla. 2005).
[45] *Goldberg*, 899 So. 2d at 1105 (citing *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003)).
[46] *Kohl*, 149 So. 3d at 135 (citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001)).
[47] *Kohl*, 149 So. 3d at 135; *Whitt*, 788 So. 2d at 217.
[48] *Bongiorno v. Americorp, Inc.*, 159 So. 3d 1027 (Fla. 5th DCA 2015) (citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009)).
[49] *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).
[50] *Sanders v. ERP Operating Ltd. P'ship*, 157 So. 3d 273 (Fla. 2015).
[51] *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).
[52] *Id.* at 981-982.
[53] *Id.* at 982.

Negligence is a tort that is unintentionally committed. To prevail in a lawsuit for negligence, the plaintiff (the party seeking the remedy) must demonstrate that:

- The defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- The defendant breached his or her duty of care by failing to conform to the required standard;
- The defendant's breach caused the plaintiff to suffer an injury; and
- The plaintiff suffered actual damage or loss resulting from such injury. [54]

Section 95.11(3)(a), F.S., currently provides that general actions against a private citizen or entity founded on negligence are subject to a two-year statute of limitations.

Liability

Liability refers to the legal concept whereby a party is held legally responsible for an action. A person can be held liable based on his or her own actions, inactions, or the actions of people or animals for which he or she is legally responsible for.[55] Generally, once a party to a lawsuit has been found to have been liable, the party will likely be required to pay monetary damages.[56] In certain cases, the party may also be required to complete specific performance of an action; that is, the party may be ordered to fulfill his or her obligations under a contract as closely as possible to what was originally promised in the contract.[57]

In the event multiple parties are legally responsible for the same thing (i.e. liable), ch. 768, Florida Statutes, provides that each party's individual responsibility will be determined based on the comparative fault of each liable party. That is, a percentage of fault will be assigned to each liable party and the damages will be split between the parties based upon the percentage of fault that was attributed to the respective party.

Damages

Compensatory Damages

Actual damages, also called compensatory damages, are damages the plaintiff actually suffered as the result of the injury.[58] Juries award compensatory damages to compensate an injured person for a defendant's negligent acts.[59] Compensatory damages consist of both:

- "Economic damages," which typically consist of financial losses that can be easily quantified, such as lost wages, the cost to replace damaged property, or the cost of medical treatment; and
- "Non-economic damages," which typically consist of nonfinancial losses that cannot be easily quantified, such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, and loss of the capacity to enjoy life.[60]

Punitive or Exemplary Damages

In certain limited situations, a court may also award "punitive damages," the purpose of which is to punish a defendant for bad behavior and deter future bad conduct, rather than to compensate the plaintiff for a loss.[61] Punitive damages are sometimes referred to as "exemplary damages," but both terms convey the same idea; that is,

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[54] 6 *Florida Practice Series* s. 1.1; *see Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).
[55] Cornell Law School, Legal Information Institute, *Liability*, https://www.law.cornell.edu/wex/liability (last visited March 21, 2025).
[56] *Id.*
[57] *Id.*
[58] *Birdsall v. Coolidge*, 93 U.S. 64 (1876).
[59] *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).
[60] *Cf.* s. 766.202(8), F.S.
[61] *See* ss. 768.72, 768.725, and 768.73, F.S. (providing standards and requirements for awarding punitive damages).

extra damages awarded beyond that actually incurred by the plaintiff.[62] Under Florida Law, an award of punitive damages generally may not exceed three times the value of the compensatory damages awarded, or $500,000.[63] In order to be awarded punitive damages, a plaintiff must prove by clear and convincing evidence that he or she is entitled to such (the burden of proof for a determination of regular, non-punitive damages is by the greater weight of the evidence, which is a lower burden than clear and convincing evidence).[64]

OTHER RESOURCES:

Florida Department of Transportation, Florida Rail System Plan (2023).

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Economic Infrastructure Subcommittee	18 Y, 0 N, As CS	3/12/2025	Keating	Bauldree
THE CHANGES ADOPTED BY THE COMMITTEE:	Clarifies that Florida East Coast Railway and Brightline, and their respective officers, agents, and employees, are not entitled to sovereign immunity, unless specifically provided by law.			
Civil Justice & Claims Subcommittee	13 Y, 0 N	3/27/2025	Jones	Mathews
Commerce Committee			Keating	Bauldree

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

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[62] Cornell Law School, *Exemplary Damages*, https://www.law.cornell.edu/wex/exemplary_damages (last visited March 23, 2025).
[63] S. 768.73, F.S. provides for an increased limit to punitive damages under certain situations such as motivation or intent of the defendant.
[64] S. 768.725, F.S.

A bill to be entitled

An act relating to indemnification and insurance obligations of commuter rail transportation providers; creating part III of ch. 343, F.S., entitled "Coastal Link Commuter Rail Service Act,"; creating s. 343.811, F.S.; providing a short title; providing definitions; authorizing agencies, in conjunction with the operation of certain commuter rail services, to assume certain indemnification and insurance obligations, subject to certain requirements; providing construction; reenacting s. 341.302(17)(d), F.S., relating to the rail program and duties and responsibilities of the Department of Transportation, to incorporate the enactment of part III of ch. 343, F.S., in a reference thereto; providing an effective date.

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

Section 1. Part III of chapter 343, Florida Statutes, consisting of section 343.811, is created and entitled "Coastal Link Commuter Rail Service Act."

Section 2. Section 343.811, Florida Statutes, is created to read:

343.811 Power to assume indemnification and insurance

obligations.—

(1) SHORT TITLE.—This section may be cited as the "Coastal Link Commuter Rail Service Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Agency" means a state, county, municipality, district, authority, or other separate unit of government created or established by law which has entered into an agreement with Brightline, which agreement permits it to operate commuter rail service on the Coastal Link corridor.

(b) "Brightline" means Brightline Trains Florida, LLC, or its successors and assigns, or any of its affiliates that is a party to an agreement with an agency in connection with the Coastal Link corridor. For the purposes of its status as an indemnitee, the term "Brightline" includes Florida East Coast Dispatch, LLC, or its successors or assigns.

(c) "Coastal Link corridor" means the rail transit system, including the intercity passenger rail service stations and vehicle maintenance facilities, located on or adjacent to FECR and Brightline rail corridor in Miami-Dade County, Broward County, and Palm Beach County. The term includes structures essential to railroad operations, including land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the

purposes of construction, operation, or maintenance of a railroad that provides rail service.

(d) "Commuter rail service" means the operation of trains transporting passengers and making frequent stops within urban areas and the immediate suburbs along the rail corridor for the purpose of transporting passengers, including boarding and alighting and the nonrevenue movement of passenger trains for storage, maintenance, or repairs. The term does not include the operation of trains by Brightline transporting passengers in intercity passenger rail service between Brightline stations. As used in this paragraph, "Brightline stations" means the Brightline-owned intercity passenger rail service stations in Miami located near Aventura, Fort Lauderdale, Boca Raton, and West Palm Beach, as well as any future stations developed by Brightline in connection with its intercity passenger rail service.

(e) "FECR" means Florida East Coast Railway, LLC, or its successors and assigns. For the purposes of its status as an indemnitee, the term "FECR" includes Florida East Coast Dispatch, LLC, or its successors and assigns.

(f) "Intercity passenger rail service" means all passenger service on the Coastal Link corridor other than commuter rail service and is characterized by trains making less frequent stops along the Coastal Link corridor than the commuter rail service makes.

(g) "Joint infrastructure" means any portion or segment of the Coastal Link corridor which does not contain tracks or infrastructure designated for the exclusive use of an operator. Train stations, including, but not limited to, pedestrian bridges, stairs, or conveyance systems, do not constitute part of the joint infrastructure.

(h) "Limited covered accident" means a collision directly between the trains, locomotives, rail cars, or rail equipment of more than one operator on the Coastal Link corridor, where the collision is caused by or arising from the willful misconduct of one of the responsible operators, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of the responsible operator, as adjudicated pursuant to a final and unappealable court order. For purposes of this paragraph, "responsible operator" means an operator or its subsidiaries, agents, licensees, employees, officers, or directors which has caused a collision as a result of its willful misconduct.

(i) "Operator" means:

1. Brightline, including any passenger rail operators that access the Coastal Link corridor pursuant to a contract with Brightline, other than an agency;

2. FECR, including Amtrak or any freight rail operators that access the Coastal Link corridor pursuant to a contract with FECR;

3. An agency, including any commuter rail operators that access the Coastal Link corridor pursuant to a contract with an agency; or

4. SFRTA, with respect to its operations contemplated under s. 343.545.

(j) "Passenger" means, with respect to intercity passenger rail service or commuter rail service, a person, ticketed or unticketed, using the intercity passenger rail service or commuter rail service on the Coastal Link corridor:

1. Onboard trains, locomotives, rail cars, or rail equipment employed in such intercity passenger rail service or commuter rail service or boarding or alighting therefrom;

2. On or about the Coastal Link corridor for any purpose related to such intercity passenger rail service or commuter rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or

3. Meeting, assisting, or in the company of a person described in subparagraph 1. or subparagraph 2.

(k) "Proportionate share" means, with respect to a loss, injury, or damage for which operators share responsibility, a percentage in proportion to the number of operators involved in the relevant incident.

1. When one or more agencies are jointly operating a commuter rail service, such agencies are considered a single

operator for purposes of computing and assessing the proportionate share of such loss, injury, or damage.

2. When two operators are involved in the incident, each is responsible for one-half of such loss, injury, or damage; when three operators are involved in the incident, each is responsible for one-third of such loss, injury, or damage, and so on.

3. When more than one agency shares responsibility with respect to any loss, injury, or damage, each such agency is considered a separate entity for purposes of determining its proportionate share.

(l) "Rail corridor invitee" means a person who is on or about the Coastal Link corridor who is a passenger or who is otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of an operator. The term does not include patrons at any station who are not also passengers, commercial or residential tenants at any station or the developments in and around the stations or their invitees, or third parties performing work at a station or in the Coastal Link corridor, including any utilities or fiber optic companies.

1. A rail corridor invitee of an agency may not be considered a rail corridor invitee of Brightline or FECR.

2. A rail corridor invitee of Brightline or FECR may not be considered a rail corridor invitee of an agency.

3. An employee of an operator is not a rail corridor invitee of such operator at any time the employee is a passenger or is otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of another operator.

4. When a passenger is transferring from the service of one operator to another, the passenger is a rail corridor invitee of the first operator until the passenger has left the first operator's platform, at which time the passenger is then a rail corridor invitee of the other operator.

(m) "Self-insurance retention amount" means an amount equal to $5 million.

(n) "SFRTA" means the South Florida Regional Transportation Authority.

(3) ASSUMPTION OF OBLIGATIONS; PURCHASE OF INSURANCE.—In conjunction with the development or operation of a commuter rail service on the Coastal Link corridor, an agency may:

(a) Assume obligations pursuant to the following:

1.a. The agency may assume the obligation by contract to protect, defend, indemnify, and hold harmless FECR and its officers, agents, and employees from and against:

(I) Any liability, cost, and expense, including, but not limited to, the agency's passengers and other rail corridor invitees in, on, or about the Coastal Link corridor, regardless

of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever.

(II) Any loss, injury, or damage incurred by other rail corridor invitees up to the amount of the self-insurance retention amount with respect to limited covered accidents caused by the agency.

b. The agency may assume the obligation by contract to protect, defend, indemnify, and hold harmless Brightline and its officers, agents, and employees from and against:

(I) Any liability, cost, and expense, including, but not limited to, the agency's passengers and rail corridor invitees in the Coastal Link corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of Brightline, its successors, or its officers, agents, and employees, or any other person or persons whomsoever.

(II) Any loss, injury, or damage incurred by other rail corridor invitees up to the amount of the self-insurance

retention amount with respect to limited covered accidents caused by the agency.

2. The assumption of liability of the agency by contract pursuant to sub-subparagraph 1.a. or sub-subparagraph 1.b. may not in any instance exceed the following parameters of allocation of risk:

a. The agency may be solely responsible for any loss, injury, or damage to the agency's passengers, or rail corridor invitees, third parties, or trespassers, regardless of circumstances or cause, subject to sub-subparagraph b. and subparagraphs 3., 4., and 5.

b.(I) In the event of a limited covered accident caused by FECR, the authority of an agency to protect, defend, and indemnify FECR for all liability, cost, and expense, including punitive or exemplary damages, in excess of the self-insurance retention amount exists only if FECR agrees, with respect to such limited covered accident caused by FECR, to protect, defend, and indemnify the agency for the amount of the self-insurance retention amount.

(II) In the event of a limited covered accident caused by Brightline, the authority of an agency to protect, defend, and indemnify Brightline for all liability, cost, and expense, including punitive or exemplary damages, in excess of the self-insurance retention amount exists only if Brightline agrees, with respect to such limited covered accident, to protect,

defend, and indemnify the agency for the amount of the self-insurance retention amount.

3. When only one train is involved in an incident and:

a. The train is an agency's train, including an incident with trespassers or at-grade crossings, the agency may be solely responsible for any loss, injury, or damage.

b. The train is FECR's train, including an incident with trespassers or at-grade crossings, FECR is solely responsible for any loss, injury, or damage, except for the agency's passengers and other rail corridor invitees, which are the responsibility of the agency, and Brightline's passengers and other rail corridor invitees, which are the responsibility of Brightline.

c. The train is Brightline's train, including an incident with trespassers or at-grade crossings, Brightline is solely responsible for any loss, injury, or damage, except for the agency's passengers or rail corridor invitees, which are the responsibility of the agency, and FECR's rail corridor invitees, which are the responsibility of FECR.

4. When an incident involves more than one operator, each operator is responsible for:

a. Its property; passengers; employees, excluding employees who are, at the time of the incident, rail corridor invitees of another operator; and other rail corridor invitees.

b. Its proportionate share of any loss or damage to the

joint infrastructure.

c. Its proportionate share of any loss, injury, or damage to:

(I) Rail corridor invitees who are not rail corridor invitees of operators, provided that the agency shall always be responsible for its passengers and its rail corridor invitees regardless of whether the agency was involved in the incident.

(II) Trespassers or third parties outside the Coastal Link corridor as a result of the incident.

5. Any such contractual duty to protect, defend, indemnify, and hold harmless FECR or Brightline with respect to claims by rail passengers shall expressly include a specific cap on the amount of the contractual duty, which amount may not exceed $323 million per occurrence and shall be adjusted so that the per-occurrence insurance requirement is equal to the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident in accordance with 49 U.S.C. s. 28103, or any successor provision, without prior legislative approval.

6. Notwithstanding any provision of this section to the contrary, the liabilities of the agency to the state or any other agency shall be as set forth in an agreement among such entities and limited by s. 768.28(19).

(b) Purchase liability insurance, which amount may not

exceed $323 million per occurrence, which amount shall be adjusted so that the per-occurrence insurance requirement is equal to the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident in accordance with 49 U.S.C. s. 28103, or any successor provision, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for a county agency, any freight rail operator as described in paragraph (a), Brightline, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed the self-insurance retention amount.

1. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of the Coastal Link corridor.

2. Any self-insured retention account shall be a segregated account of the agency and shall be subject to the same conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of liability

insurance purchased under this paragraph.

3. Unless otherwise specifically provided by general law, FECR and Brightline, and their respective officers, agents, and employees, are not officers, agents, employees, or subdivisions of the state and are not entitled to sovereign immunity.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for tort claims or deemed to increase the limits of the agency's liability for tort claims as provided in s. 768.28.

Section 3. For the purpose of incorporating the enactment of part III of chapter 343, Florida Statutes, in a reference thereto, paragraph (d) of subsection (17) of section 341.302, Florida Statutes, is reenacted to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities, including the rail enterprise and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the

department shall:

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(d) Without altering any of the rights granted to the department under this section, agree to assume the obligations to indemnify and insure, pursuant to s. 343.545, freight rail service, intercity passenger rail service, and commuter rail service on a department-owned rail corridor, whether ownership is in fee or by easement, or on a rail corridor where the department has the right to operate.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. The provisions of this subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity

designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

Section 4. This act shall take effect July 1, 2025.

HB 955

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: HB 955	**COMPANION BILL:** SB 1498 (Ingoglia)
TITLE: Employment Eligibility	**LINKED BILLS:** None
SPONSOR(S): Jacques	**RELATED BILLS:** None

Committee References

Industries & Professional Activities
12 Y, 4 N
➤
Commerce

SUMMARY

Effect of the Bill:

The bill expands to all private employers the requirement to use the E-Verify system to verify each employee's employment eligibility, beginning on July 1, 2025.

Fiscal or Economic Impact:

Indeterminate. The bill may have an indeterminate fiscal impact on state government and the private sector.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill expands to all private employers the requirement to use the E-Verify system to verify each employee's employment eligibility, beginning on July 1, 2025. (Section 1)

The effective date of the bill is July 1, 2025. (Section 2)

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

Indeterminate. The bill may have an indeterminate fiscal impact on state agencies related to enforcement.

PRIVATE SECTOR:

Indeterminate. Businesses may have additional workload related to the use of the E-Verify system[1], and some may be subject to fines related to violations.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Florida E-Verify Law

Florida's requires the use of the E-Verify system to verify a new employee's employment eligibility by:[2]

[1] E-Verify, *History and Milestones*, https://www.e-verify.gov/about-e-verify/history-and-milestones (last visited Mar. 28, 2025). In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which, among other provisions, created various employment eligibility verification programs, including E-Verify. E-Verify is an Internet-based system through which an employer can verify that a newly hired employee is authorized to work in the United States. E-Verify is administered by DHS in partnership with the Social Security Administration. It is free for employers to use and provides an automated link to Government records to help employers confirm the employment eligibility of employees.

- **All public employers**.
- **Private employers with 25 or more employees**.

Each employer that is required, or who volunteers, to use the E-Verify system, is required to certify on its first return each calendar year to the tax service provider that it is in compliance with the E-Verify requirements when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.[3]

The law provides requirements for employers when the system is unavailable,[4] requires employers to retain documentation of verifications,[5] and prohibits an employer from continuing to knowingly employ an unauthorized alien.[6]

If the E-Verify system is unavailable for the three business days after the first day a new employee begins working and the employer cannot access the system to verify the employee's employment eligibility, the employer must use the I-9 Form to verify employment eligibility. The employer must document the unavailability of the system by retaining: A screenshot each day that shows the employer's inability to access the system; A public announcement that the E-Verify system is not available; or Any other communication or notice regarding the unavailability of the system.

The following entities may request, and an employer must provide, copies of any documentation relied upon by the employer for the verification of a new employee's employment eligibility:[7]
- The Department of Law Enforcement (FDLE);
- The Attorney General (AG);
- The state attorney in the circuit in which the new employee works;
- The statewide prosecutor; or
- The Department of Commerce (DC).

These entities must rely upon the Federal Government to verify an employee's employment eligibility and may not independently make a final determination as to whether an employee is an unauthorized alien.[8]

An employer that uses the E-Verify system or, if that system is unavailable, the Employment Eligibility Verification form (Form I-9), with respect to the employment of an unauthorized alien has established a rebuttable presumption and an affirmative defense that the employer has not violated the state prohibition on hiring unauthorized aliens,[9] with respect to such employment.[10]

The DC is responsible for the administration of compliance requirements, as follows:[11]
- Beginning July 1, 2024, if it determines that an employer failed to use the E-Verify system, the DC is required to:
  - Notify the employer of its determination; and
  - Provide the employer with 30 days to cure the noncompliance.
- If it determines that an employer failed to use the E-Verify system as required three times in any 24-month period, it must impose a fine of $1,000 per day until the employer provides proof of compliance.
- Noncompliance constitutes grounds for the suspension of all licenses issued by a licensing agency subject to chapter 120, F.S., until the noncompliance is cured.

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[2] S. 448.095(2)(a) and (b), F.S.
[3] S. 448.095(2)(b)3., F.S.
[4] S. 448.095(2)(c), F.S.
[5] S. 448.095(2)(d), F.S.
[6] S. 448.095(2)(e), F.S.
[7] S. 448.095(3)(a), F.S.
[8] S. 448.095(3)(b), F.S.
[9] S. 448.09, F.S.
[10] S. 448.095(4)(a), F.S.
[11] S. 448.095(6), F.S.

- Fines must be deposited into the State Economic Enhancement and Development Trust Fund for use by the DC for employer outreach and public notice of the state's employment verification laws.

E-Verify Federal Law

To use the E-Verify system, an employer must open a "case" for the employee on the system and enter basic information from the employee's Form I-9 (name, address, SSN) into the case.[12] Then, the system checks the submitted information to records that are available to the DHS and SSA, and issues one of the following possible results to the employer:[13]

- **Employment Authorized** - The employee's information matched records available to the DHS and/or SSA.
- **E-Verify Needs More Time** - This case was referred to the DHS for further verification.
- **Tentative Nonconfirmation (Mismatch)** - Information did not match records available to the DHS and/or SSA. Additional action is required.
- **Case in Continuance** - The employee has contacted the DHS or visited an SSA field office, but more time is needed to determine a final case result.
- **Close Case and Resubmit** – The DHS or SSA requires that the employer to close the case and create a new case for the employee. This result may be issued when the employee's United States passport, passport card, or driver's license information is incorrect.
- **Final Nonconfirmation** - E-Verify cannot confirm the employee's employment eligibility after the employee contacted the DHS or SSA, the time for resolving the case expired, or the DHS closed the case without confirming the employee's employment eligibility for some other reason.

If the result is Tentative Non-confirmation, then the employer must notify the employee, who must take further action to verify his or her eligibility. If the result is E-Verify Needs More Time or Case in Continuance, then the E-Verify system needs more time to process the case.[14]

E-Verify Defenses for Employers

According to federal law, an employer using the I-9 Form, establishing good faith compliance with the law, has established an affirmative defense and a rebuttable presumption that the person or entity has not violated the federal law with respect to such hiring, recruiting, or referring.[15],[16]

The IRCA provides sanctions to be imposed on employers who knowingly employ aliens who are not authorized to work.[17] Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.[18] The United States Citizenship and Immigration Services (USCIS) enforces these provisions.[19]

[12] E-Verify, *Verification Process*, for details on how the system works, https://www.e-verify.gov/employers/verification-process (last visited Mar. 28, 2025). Before using E-Verify, an employer must enroll and sign a Memorandum of Understanding that provides the terms of agreement between the employer and the DHS. *See* E-Verify, *The E-Verify Memorandum of Understanding for Employers*, https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf (last visited Mar. 28, 2025).
[13] *Id*.
[14] *Id*.
[15] 8 U.S.C. s. 1324a(a)(3).
[16] 8 U.S.C. s. 1324a notes, *Pilot Programs for Employment Eligibility Confirmation*.
[17] 8 U.S.C. s. 1324a(a)(1)-(2).
[18] 8 U.S.C. s. 1324c.
[19] 8 U.S.C. s. 1324a.

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2023	CS/HB 1617	Michael, Jacques	Ingoglia	The bill became effective July 1, 2023, except as otherwise provided.

OTHER RESOURCES:

U.S. Department of Homeland Security, E-Verify

Florida Department of Commerce, E-Verify Compliance

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Industries & Professional Activities Subcommittee	12 Y, 4 N	4/1/2025	Anstead	Thompson
Commerce Committee			Hamon	Thompson

A bill to be entitled

An act relating to employment eligibility; amending s. 448.095, F.S.; requiring that all private employers, rather than only those employing more than a specified number of employees, use the E-Verify system to verify a new employee's employment eligibility beginning on a specified date; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 448.095, Florida Statutes, is amended to read:

448.095 Employment eligibility.—

(2) EMPLOYMENT VERIFICATION.—

(b)1. A public agency shall use the E-Verify system to verify a new employee's employment eligibility as required under paragraph (a).

2. Beginning on July 1, 2025 ~~2023~~, a private employer ~~with 25 or more employees~~ shall use the E-Verify system to verify a new employee's employment eligibility as required under paragraph (a).

3. Each employer ~~required to use the E-Verify system under this paragraph~~ must certify on its first return each calendar year to the tax service provider that it is in compliance with this section when making contributions to or reimbursing the

state's unemployment compensation or reemployment assistance system. ~~An employer that voluntarily uses the E-Verify system may also make such a certification on its first return each calendar year in order to document such use.~~

Section 2. This act shall take effect July 1, 2025.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CS/HB 1161

FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 1161	**COMPANION BILL:** CS/SB 1400 (Calatayud)
TITLE: Removal of Altered Sexual Depictions Posted Without Consent	**LINKED BILLS:** None
SPONSOR(S): Duggan	**RELATED BILLS:** None

Committee References

Industries & Professional Activities	➤	Judiciary	➤	Commerce
14 Y, 0 N, As CS		20 Y, 0 N		

SUMMARY

Effect of the Bill:

The bill revises provisions of Florida's deepfake law to require covered platforms, such as websites and online services, to remove altered sexual depictions and copies of such depictions from their platform upon request of the victim. The bill requires such platforms to establish a process for persons to notify them of deepfake depictions and request their removal. The bill requires the platforms to remove such content within 48 hours of receiving a request, provides liability protections for platforms that act in good faith, establishes penalties for failure to comply, and makes such failures a violation of the Florida Deceptive and Unfair Trade Practices Act. The bill provides an exception for certain information or telecommunications services and certain online services that do not primarily consist of user-generated content.

The effective date of the bill is, except as otherwise provided, upon becoming law.

Fiscal or Economic Impact:

The bill may have an indeterminate economic impact on the private sector.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

Notice and Removal Process

The bill revises provisions of Florida's deepfake law, as follows:

- Names the act, "Brooke's Law." (Section 1)
- Requires, no later than December 31, 2025, covered platforms to establish a process by which an identifiable person or an authorized person acting on behalf of the identifiable person may notify and request removal of an altered sexual depiction that was published without their consent.
- Requires the notification and request for removal to include:
  - A physical or electronic signature of the identifiable person or an authorized person acting on their behalf.
  - An identification of, and information reasonably sufficient for the covered platform to locate, the altered sexual depiction of the identifiable person.
  - A brief statement that the identifiable person has a good faith belief that any altered sexual depiction identified is not consensual, including any relevant information for the covered platform to determine the depiction was published without consent.
  - Information sufficient to enable the covered platform to contact the identifiable person or authorized person. (Section 2)

Clear and Conspicuous Notice

The bill requires a covered platform to provide clear and conspicuous notice of the notice and removal process, which:

- Is easy to read and in plain language.
- Provides information regarding the responsibilities of the covered platform under the bill.
- Includes a description of how a person can submit a notification and request for removal. (Section 2)

The bill requires, upon receipt of a valid removal request, as soon as possible but no later than 48 hours, the covered platform to remove the altered sexual depiction and make reasonable efforts to identify and remove any known, identical copies of such depiction. (Section 2)

The bill exempts:

- Providers of information services or telecommunications services, as those terms are defined in 47 U.S.C. s. 153, for content provided by another person.
- Electronic mail.
- Except as otherwise provided, an online service, application, or website:
    - That consists primarily of preselected content by the provider, rather than content that is user generated; and
    - For which any chat, comment, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content described above. (Section 2)

The bill defines "covered platform" as a website, online service, online application, or mobile application that serves the public and:

- Primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files; or
- For which it is in the regular course of trade or business of the website, online service, online application, or mobile application to publish, curate, host, or make available content of nonconsensual altered sexual depictions. (Section 2)

Liability

The bill provides that a covered platform is not liable for any claim based on the platform's good faith removal of material claimed to be a nonconsensual altered sexual depiction, regardless of whether the altered sexual depiction is ultimately found to be unlawful. (Section 2)

Remedies

In addition to the remedies provided in s. 836.13(5), F.S., which authorize a person who is portrayed in an altered sexual depiction without his or her consent to initiate a civil cause of action against a person who willfully and maliciously promoted such depiction, a failure to comply with the notice and removal requirements of the bill constitutes an unfair or deceptive act or practice under the Florida Deceptive and Unfair Trade Practices Act. (Section 2)

Effective Date

The bill takes effect upon becoming law. (Section 3)

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

Indeterminate. The bill provides notification and removal requirements, and civil penalties for noncompliance, for businesses considered a covered platform. The cost of compliance and number of violations for noncompliance is unknown.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Nonconsensual Altered Sexual Depictions

Over the last decade, Americans have started to recognize the growing problem of distribution of sexually explicit images without consent, otherwise known as "revenge porn."[1] Although Florida and other states have enacted protections against revenge porn, there are still instances in which a person may be a victim of nonconsensual pornography in the form of altered sexual depictions, more commonly known as "deepfakes."[2] Deepfakes typically take the form of imagery, video, and audio material that "is produced or distributed without the consent of the subject and has been altered, potentially with artificial intelligence, to show nonconsensual intimate or explicit content."[3] Advancements in technology, such as increased availability and usage of generative AI, have enabled perpetrators to manipulate sexual materials in ways that circumvent revenge porn laws. For example, "if a photo depicted the victim nude, where the victim's face was real, but the victim's genitals were computer generated, many laws would not apply because the intimate part of the image was not the victim's."[4]

Researchers have discovered that 98% of the deepfake videos found online are explicitly pornographic and 99% of deepfake pornography features women.[5] Moreover, the creation of deepfake pornography is rapidly increasing, as researchers found that there were 464% more deepfake pornographic videos created in 2023 than in 2022.[6] Further, 90% of deepfake pornography is found on dedicated deepfake pornography platforms.[7] In response to the prevalence of deepfakes, the Department of Homeland Security has declared that "[d]eepfakes and the misuse of synthetic content pose a clear, present, and evolving threat to the public across national security, law enforcement, financial, and societal domains."[8]

Florida Deepfake Law

In 2022, the Florida Legislature created s. 836.13, F.S., to address deepfake images by providing a third degree felony for the willful and malicious promotion of any altered sexual depiction of an identifiable person, without the consent of the identifiable person, and if the person knew or reasonably should have known that such visual depiction was an altered sexual depiction.[9]

"Altered sexual depiction" means any visual depiction[10] that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person:[11]

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[1] "In 2016, 10 million people, or 2% of Americans had reported being victims of nonconsensual porn. Individuals ages 18-29 generally, and women aged 18-29 specifically, as well as LGTBQ+ Americans were victimized at even higher rates. In 2017, the number of young Americans ages 18-29 who had become victims of nonconsensual porn jumped to 12%, an increase of over 100%. In 2019, a larger study suggests that the problem has only grown, showing a 400% increase in the number of victims from 2016. Taken as a whole, these statistics show the number of victims continues to rise at an alarming rate even though both the legal system and society as a whole have attempted to address the issue." Chance Carter, NAT'L ASS'N OF ATT'Y GEN., *An Update on the Legal Landscape of Revenge Porn*, https://www.naag.org/attorney-general-journal/an-update-on-the-legal-landscape-of-revenge-porn/#identifier_4_21493 (last visited Mar. 21, 2025).

[2] RAINN, *RAINN's Recommendation for Effectively Addressing Nonconsensual Manipulated Intimate Material (Deepfakes)*, https://www.rainn.org/sites/default/files/import/RAINN%20on%20nonconsensual%20manipulated%20intimate%20material%20-%20Google%20Docs.pdf#:~:text=We%20refer%20to%20imagery%2C%20video%2C%20audio%2C%20etc.%20that,or%20explicit%20content%20as%20%E2%80%9Cnonconsensual%20manipulated%20intimate%20material%E2%80%9D (last visited Mar. 21, 2025).; *see also* DEPT. OF HOMELAND SEC., *Increasing Threat of Deepfake Identities*, cations/increasing_threats_of_deepfake_identities_0.pdf (last visited Mar. 21, 2025).

[3] *Id*.

[4] RAINN, *supra* note 2.

[5] Security Hero, *2023 State of Deepfakes*, https://www.securityhero.io/state-of-deepfakes/#concluding-remarks (last visited Mar. 21, 2025).

[6] *Id*.

[7] *Id*.

[8] DEPT. OF HOMELAND SEC., *supra* note 2.

[9] *See* s. 836.13, F.S.

[10] "Visual depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or other visual representation. S. 836.13(1)(e), F.S.

[11] "Identifiable person" means a person who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. S. 836.13(1)(b), F.S.

- With the nude body parts[12] of another person as the nude body parts of the identifiable person;
- With computer-generated nude body parts as the nude body parts of the identifiable person; or
- Engaging in sexual conduct[13] in which the identifiable person did not engage.[14]

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to or participate in the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense and does not relieve a person of criminal liability for promoting an altered sexual depiction.[15]

The law authorizes the following civil remedies for victims:
- Injunctive relief;
- Monetary damages of $10,000 or actual damages; and
- Reasonable attorney's fees and costs.[16]

While this statute may be used by victims to obtain justice from violations regarding deepfake pornography, the statute does not currently provide for the removal of such content from online platforms.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[17] FDUTPA was modeled after the FTC Act.[18]

The Department of Legal Affairs (DLA) or state attorney's office (SAO) in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[19] The SAO may enforce violations of FDUTPA if the violations take place within its jurisdiction. The DLA has enforcement authority when the violation is multi-jurisdictional, the state attorney defers to the DLA in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[20] In certain circumstances, consumers may also file suit through private actions.[21]

The DLA and the SAO have powers to investigate FDUTPA claims, which include:[22]
- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

The DLA and SAO may seek the following remedies:
- Declaratory judgments;
- Injunctive relief;

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[12] "Nude body parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. The term does not under any circumstances include a mother breastfeeding her baby. S. 836.13(1)(c), F.S.
[13] S. 847.001(19), F.S.
[14] S. 836.13(1)(a), F.S.
[15] S. 836.13(4), F.S.
[16] S. 836.13(5), F.S.
[17] S. 501.201, F.S.
[18] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[19] Ss. 501.203(2) and s. 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Mar. 21, 2025).
[20] S. 501.203(2), F.S.
[21] S. 501.211, F.S.
[22] S. 501.206(1), F.S.

- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[23]

FDUTPA may not be applied to certain entities in certain circumstances, including:[24]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2022	CS/CS/SB 1798	Harding	Book	The bill became law on October 1, 2022.

OTHER RESOURCES:

Thomson Reuters, Deepfakes: Federal and state regulation aims to curb a growing threat.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Industries & Professional Activities Subcommittee	14 Y, 0 N, As CS	3/19/2025	Anstead	Thompson
THE CHANGES ADOPTED BY THE COMMITTEE:	Revises the exemption for certain providers of "broadband Internet service," to instead exempt providers of "information or telecommunications services."			
Judiciary Committee	20 Y, 0 N	3/26/2025	Kramer	Leshko
Commerce Committee			Hamon	Thompson

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

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[23] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.
[24] S. 501.212(4), F.S.

A bill to be entitled

An act relating to removal of altered sexual depictions posted without consent; providing a short title; amending s. 836.13, F.S.; defining the term "covered platform"; requiring covered platforms to establish a process for removal of altered sexual depictions posted without the consent of the identifiable person; providing requirements for such a process; requiring notice of such a process; providing immunity for good faith compliance; prohibiting unreasonable failure to comply; providing remedies; providing exceptions; providing an effective date.

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

Section 1. This act may be cited as "Brooke's Law."

Section 2. Paragraphs (b) through (e) of subsection (1) of section 836.13, Florida Statutes, are redesignated as paragraphs (c) through (f), respectively, a new paragraph (b) is added to that subsection, subsections (6), (7), and (8) of that section are renumbered as subsections (7), (8), and (9), respectively, and a new subsection (6) is added to that section, to read:

836.13 Promotion of an altered sexual depiction; prohibited acts; penalties; applicability.—

(1) As used in this section, the term:

CODING: Words stricken are deletions; words underlined are additions.

(b) "Covered platform" means a website, online service, online application, or mobile application that serves the public and:

1. That primarily provides a forum for user-generated content, including messages, videos, images, games, and audio files; or

2. For which it is in the regular course of trade or business of the website, online service, online application, or mobile application to publish, curate, host, or make available content of nonconsensual altered sexual depictions.

(6)(a) No later than December 31, 2025, a covered platform shall establish a process whereby an identifiable person or an authorized person acting on behalf of such person may:

1. Notify the covered platform of an altered sexual depiction published on the covered platform which includes a depiction of the identifiable person and was published without the consent of the identifiable person; and

2. Submit a request for the covered platform to remove such altered sexual depiction.

(b) A notification and request for removal of an altered sexual depiction submitted under the process in paragraph (a) shall include, in writing:

1. A physical or electronic signature of the identifiable person or authorized person.

2. An identification of, and information reasonably

sufficient for the covered platform to locate, the altered sexual depiction of the identifiable person.

3. A brief statement that the identifiable person has a good faith belief that any altered sexual depiction identified under subparagraph 2. is not consensual, including any relevant information for the covered platform to determine the altered sexual depiction was published without the consent of the identifiable person.

4. Information sufficient to enable the covered platform to contact the identifiable person or authorized person.

(c) A covered platform shall provide on the platform a clear and conspicuous notice, which may be provided through a clear and conspicuous link to another web page or disclosure, of the notice and removal process established under paragraph (a) which:

1. Is easy to read and in plain language.

2. Provides information regarding the responsibilities of the covered platform under this subsection, including a description of how a person can submit a notification and request for removal.

(d) Upon receiving a valid removal request from an identifiable person or an authorized person using the process described in paragraph (a), a covered platform shall, as soon as possible, but not later than 48 hours after receiving such request:

1. Remove the altered sexual depiction.

2. Make reasonable efforts to identify and remove any known identical copies of such altered sexual depiction.

(e) A covered platform shall not be liable for any claim based on the covered platform's good faith disabling of access to, or removal of, material claimed to be a nonconsensual altered sexual depiction based on facts or circumstances from which the unlawful publishing of an altered sexual depiction is apparent, regardless of whether the altered sexual depiction is ultimately determined to be unlawful.

(f) In addition to the remedies under subsection (5), a failure to reasonably comply with the notice and removal obligations under this subsection shall be treated as a an unfair or a deceptive act or practice under part II of chapter 501, and the person or entity responsible shall be subject to the penalties and remedies provided in part II of chapter 501.

(g) This subsection does not apply to the following:

1. An information service or a telecommunications service, as those terms are defined in 47 U.S.C. s. 153, providing services for content provided by another person.

2. Electronic mail.

3. Except as provided in subparagraph (1)(b)2., an online service, application, or website:

a. That consists primarily of content that is not user generated but is preselected by the provider of such online

service, application, or website; and

b. For which any chat, comment, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content described in subparagraph a.

Section 3. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 1161 by Rep. Duggan
Removal of Altered Sexual Depictions Posted without Consent

AMENDMENT SUMMARY
April 7, 2025

Amendment 1 by Rep. Duggan (between lines 105-106):

- Provides a severability clause.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Duggan offered the following:

Amendment (with title amendment)

Between lines 105 and 106, insert:

(9) If any provision of this act or its application to any person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of the other provisions or applications of this subsection.

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

Remove line 12 and insert:

providing exceptions; providing severability;

providing an effective date.