

STORAGE NAME: h2143a.fs
DATE: April 13, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 2143
RELATING TO: Securities
SPONSOR(S): Representative C. Green
COMPANION BILL(S): CS/SB 2226 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FINANCIAL SERVICES YEAS 11 NAYS 0
(2)
(3)
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(5)

I. SUMMARY:

In the case of an unlawful sale of securities, when the legal ground for the unlawful sale is the failure to renew a branch office registration pursuant to s. 517.12(11), F.S. (1998 Supp.), or the failure of a securities dealer, investment advisor, associated person or branch office to file a change of address amendment pursuant to s. 517.12(13), F.S. (1998 Supp.), the bill would eliminate the remedy of rescission. However, the bill would not remove the ability of investors to recover monetary damages in such instances. Other legal and equitable remedies are available for all other violations listed therein.

The bill appears to be revenue neutral.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida law requires that prior to selling or offering to sell securities in the state, securities dealers, investment advisors, associated persons and branch offices must be registered with the Department of Banking and Finance (department). The registration of each dealer, investment advisor or associated person expires on December 31, and the registration of a branch office expires on March 31. Dealers, investment advisors, or associated persons who fail to renew their registration in a timely fashion are considered unregistered, but may file for reinstatement with the department on or before January 31 of the year following the year of expiration.¹ There is not currently any such reinstatement grace period for branch offices.

Section 517.211, F.S., provides remedies for purchasers in cases of an unlawful sale of securities by an unregistered securities agent. The law allows a purchaser to rescind any sale made by a dealer or agent who is not registered to sell securities with the department. This ability to rescind also applies to a sale made by any director, officer, partner, or agent of or for the seller. If that person has personally participated or aided in making the sale, he or she may be jointly and severally liable to the purchaser.

In an action for rescission under s. 517.211, F.S., a purchaser may recover the amount paid for the security, plus interest, less any income received by the purchaser on the security. A seller may recover the security if he refunds the purchase price, plus interest, less the amount of any income received by the purchaser.

Specifically, the law allows a purchaser to rescind for any sale "made in violation of s. 517.12, [F.S.]" Section 517.12, F.S. (1998 Supp.), provides for the registration of dealers, associated persons and issuers of securities in Florida. A number of the provisions under this section prescribe certain ministerial functions to be performed by such persons. Other provisions of this section describe required and prohibited activities relating to securities dealers. According to s. 517.12, F.S., (1998 Supp.):

- (1) No dealer or issuer of securities shall sell securities unless registered with the department. [Subsections (2) and (3) provide certain exemptions.]
- (4) No investment advisor shall render investment advice to residents of this state, unless the advisor is registered with the department.
- (5) No dealer or investment advisor may conduct business from a branch office unless the branch is registered with the department.
- (6) A dealer, investment advisor or branch office must file a written application with the department and (7) must submit a set of fingerprints to be reviewed by the Florida Department of Law Enforcement, unless waived by department rule. (8) The department may require an oral or written examination of the applicant.
- (9) The department may, by rule, require the maintenance of a minimum net capital for registered dealers and investment advisors.
- (10) An application fee of \$200 is required for a dealer or investment advisor, and \$40 for each associated person. Dealers and investment advisors must pay \$100 for each office in this state, until the Securities Guaranty Fund satisfies the statutory limits.
- (11) If the department finds the applicant is of good repute and character and has complied with the provisions and rules of this chapter, it must register the applicant. The registration of each dealer, investment advisor, and associated person expires on December 31, and the registration of each branch office expires on March 31 of each year, unless the registrant has renewed its registration on or before that date. A dealer or investment advisor who fails to renew a registration by the time the current registration expires, is given a 30-day grace period, and is required to pay a late fee. Reinstatement of a dealer is deemed retroactive to January 1. There is no equivalent grace period for renewal of branch registrations.

¹Section 517.12(11), F.S.(1998 Supp.). According to representatives from the securities industry, reregistration forms are reviewed on a first-in, first out basis, and is a process that may take several weeks to complete.

- (12)(a) The department may issue a license to a dealer, investment advisor, associated person, or branch office.
- (12)(b) If an associated person is terminated, the dealer or investment advisor must notify the department of the termination and the reason for the termination.
- (13) Changes in registration caused by changes in personnel of any dealer or investment advisor or by changes of any material fact must be reported to the department by written amendment. When a person or a group of persons proposes to purchase or acquire a controlling interest in a registered dealer or investment advisor, the person or group shall submit an initial application for registration prior to such purchase or acquisition.
- (14) Dealers, investment advisors and branch offices must keep records of all currency transactions in excess of \$10,000 and must file reports with the department. These records are confidential and exempt from s. 119.07(1), F.S. (1998 Supp.), except the Department of Law Enforcement and Department of Revenue are authorized to inspect these records.
- (15) In lieu of filing an application, fee or termination notice with the department, the department may establish by rule procedures for the deposit of these fees and documents with the Central Registration Depository of the National Association of Securities Dealers, Inc.
- (16) Except for primary government securities dealers, every applicant for initial or renewal registration as a securities dealer must be registered as a broker or dealer with the Securities and Exchange Commission.
- (17) A dealer located in Canada and having no office in this state, but who is registered in Florida, may effect securities transactions, provided certain conditions are met.
- (18) Dealers and associated persons must comply with continuing education requirements as established by department rule.

Section 517.12 (11), F.S. (1998 Supp.), requires securities branch offices to renew their registrations by March 31 of each year. If the renewal forms do not reach Tallahassee by March 31, the Division of Securities requires the branch office to resubmit all registration forms. The re-registration forms are reviewed in the order they reach the department. The re-registration process generally takes several weeks.

Since failure to timely renew a registration is a violation of s. 517.12, F.S. (1998 Supp.), for example, a securities purchaser may elect rescission of any transactions occurring during the time in which the branch office is unregistered. The branch office may either cease securities transactions for a period of at least several weeks or risk the possibility that any trades made during the unregistered period can be rescinded. Staff has been provided with a copy of a newspaper advertisement placed by a law firm which lists the names of brokerage firms and the date their registration was suspended due to untimely renewal. The advertisement states, "Lost Money in the Market? If you purchased securities, mutual funds, options or other investments from a brokerage firm at a location listed below during the following dates, then you may be entitled to monetary relief. . . . Call us for a free consultation. . . ."

B. EFFECT OF PROPOSED CHANGES:

In the case of an unlawful sale of securities, when the legal ground for the unlawful sale is the failure to renew a branch office registration pursuant to s. 517.12(11), F.S. (1998 Supp.), or the failure of a securities dealer, investment advisor, associated person or branch office to file a change of address amendment pursuant to s. 517.12(13), F.S. (1998 Supp.), the bill would eliminate the remedy of rescission. However, the bill would not remove the ability of investors to recover monetary damages in such instances. Other legal and equitable remedies are available for all other violations listed therein. For instance, the bill specifies the investor's right to rescission if subsections (1), (4), (5), (9), (11), (13), (16), or (18) are violated, except for temporary noncompliance with the subsections pertaining to renewal registration and address changes of branch offices, but it would eliminate the right of rescission for violations of subsections (2), (3), (5) - (8), (10), (12), (14), (15), (17) or (19), which are ministerial in nature.²

²The sections of 517.12, F.S. (1998 Supp.), which are being eliminated from the right to rescission, provide requirements which are generally ministerial in nature. These include provisions that require the filing of specified information on applications, renewal of branch office registration, termination notices, the filing of certain amendments to the application, and filing cash transaction reports. Other requirements in s. 517.12, F.S. (1998 Supp.), are more substantive in nature and are designed to protect investors, such as branch office

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill narrows available remedies in the case of an unlawful sale of securities, when the legal ground for the unlawful sale is the failure to renew a branch office registration pursuant to s. 517.12(11), F.S. (1998 Supp.) or the failure of a securities dealer, investment advisor, associated person or branch office to file a change of address amendment pursuant to s. 517.12(13), F.S. (1998 Supp.).

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill would eliminate the equitable remedy of rescission in the case of an unlawful sale of securities, only when the legal ground for the unlawful sale is the failure to renew a branch office registration pursuant to s. 517.12(11), F.S. (1998 Supp.), or the failure of a securities dealer, investment advisor, associated person or branch office to file a change of address amendment pursuant to s. 517.12(13), F.S. (1998 Supp.). Monetary damages would still be available.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 517.211, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 517.211, F.S., by enumerating the registration activities required under s. 517.12, F.S. (1998 Supp.), a violation of which would allow investors the remedy of rescission. This section further specifies that a temporary noncompliance with the provisions of this section of law pertaining to renewal registration and address changes of branch offices shall not be grounds alone for rescission at the election of the purchaser of a sale of securities transacted during the period of noncompliance. This section does not amend the investor's ability to recover damages in the event sales are made under these violations.

Section 2. Provides that this act shall be effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill may reduce the potential liability of securities dealers and associated persons to make rescission to purchasers of securities for various violations. Purchasers of securities and attorneys who represent them may have a commensurate reduction in recovery for failed investments from security dealers for such violations. The amounts are indeterminate.

D. FISCAL COMMENTS:

According to the Department of Banking and Finance, the bill is revenue neutral.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with counties and municipalities.

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 14, 1999, the Committee on Financial Services adopted one amendment which has the effect of eliminating the remedy of damages in addition to eliminating the remedy of rescission in the event an unlawful sale of securities rests on the legal ground of failure to renew a branch office registration or to file a change of address.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael A. Kliner

Susan F. Cutchins