

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 0622

SPONSOR: Senator Fasano

SUBJECT: Securities Transaction

DATE: January 22, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This bill grants full and direct authority to the Office of the Attorney General (“AG”) to initiate and pursue investigations for securities transactions fraud. This bill authorizes the AG to seek injunctive relief and restitution, and increases the maximum allowable civil and criminal penalties for violations.

This bill substantially amends ss. 517.191, 517.221, and 517.302, F.S.

II. Present Situation:

Definitions

A ‘security’ is defined to include a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of deposit, certificate of deposit for a security, certificate of interest, certain warehouse receipts, a collateral trust certificate, an investment contract or any transferable share. s. 517.021(20), F.S.

An ‘issuer’ is any person who proposes to issue, has issued, or will issue any security. This includes a person acting on behalf of a corporation, trust, or unincorporated association or partnership. s. 517.021(14), F.S.

An ‘offer to sell’ includes any attempt or offer to dispose of, or solicitation of, a security or interest in a security for value. s. 517.021(15), F.S.

A ‘boiler room’ is defined as an enterprise in which two or more persons engage in telephone communications with members of the public. s. 517.021(3), F.S.

Enforcement Authority

Chapter 517, F.S., is the Florida Securities and Investor Protection Act. The Financial Services Commission (“Commission”) through its Office of Financial Regulation (“OFR”), has complete authority over civil enforcement of the Act, under Section 517.03, F.S.

The OFR is authorized by statute to investigate and to seek injunctive relief and other remedies, including restitution. s. 517.191, F.S. The OFR is authorized to issue and serve cease and desist orders upon belief that any person is violating any rule or order promulgated by the Commission or OFR, and to impose and collect administrative fines. s. 517.221, F.S. Violations of criminal provisions of the Act may be prosecuted by the state attorney with jurisdiction or by the statewide prosecutor if the crime is multi-jurisdictional, at the direction or request of the OFR.

It appears that the only cases where the AG can initiate an investigation on its own for securities violations, without a request by the OFR, is in cases of securities fraud that also violate the Racketeer Influenced and Corrupt Organization Act (“RICO”), s.895.02(1)(a)8, F.S. This is contained in provisions of the RICO Act that identify the Department of Legal Affairs as having investigative authority under this statute.¹

Administrative Fines

The OFR is authorized to impose and collect administrative fines of up to \$5,000 against a person who is found to have violated any provision of Chapter 517, F.S., any rule or order of the OFR, or any agreement entered into between the person and the OFR. s. 517.302 (3), F.S.

The Anti-Fraud Trust Fund is funded by collected fines, and collection of costs of investigation and prosecution that may be assessed by courts or through a stipulated consent order. s. 517.302 (3), F.S. When authorized by appropriation, the funds in the Anti-Fraud Trust Fund must be used for investigation and prosecution of administrative, civil, and criminal actions arising under Chapter 517, F.S. The OFR indicates that administrative fines are the primary source of income for the Trust Fund.

The chart below sets out total deposits made into the Anti-Fraud Trust Fund for the previous four fiscal years:

Fiscal Year	Total Deposits
2000-2001	\$348,000
2001-2002	\$288,000
2002-2003	\$215,882
2003-2004, To Date	\$104,931

From FY 2002-2003, the amount initially deposited was actually \$2,878,442 but \$2,662,560 was immediately transferred out and redeposited into the Working Capital Trust Fund. This amount

¹ See ss.895.02 (7), 895.06(1), 895.05(9) and 895.07 (1) and (2), F.S.

was due to an atypically large fine collected from a national case.² According to the OFR, the primary expenditure of the Trust Fund is on payments for expert witness fees, forensic accountants and receivers.

Criminal Penalties

The following activities are regulated by Chapter 517, F.S.: operating boiler rooms to solicit members of the public by telephone, rendering advice in the context of the sale or purchase of any investment or security, and the actual issuing and selling of securities. A single violation of any of the criminal provisions of Chapter 517, F.S., including ss. 517.275, 517.301, 517.311, and 517.312, F.S.,³ constitutes a third degree felony with a Level 1 offense severity ranking, punishable by a term of imprisonment of up to five years. s. 775.082(3)(d), F.S.

III. Effect of Proposed Changes:

This bill authorizes the AG to initiate investigation on its own for securities fraud upon complaint or otherwise, and to seek injunctive relief and restitution. This bill allows for recovery of up to \$10,000 for each violation, in addition to costs and attorney's fees.

The maximum allowable administrative fine that can be imposed by the OFR for violations of securities laws is increased from \$5,000 to \$10,000 for each violation, for deposit in the Anti-Fraud Trust Fund.

This bill reclassifies violations of ss. 517.275, 517.301, and 517.311, F.S., from a third degree felony with a Level 1 ranking to a second degree felony with a Level 4 ranking, punishable by a term of imprisonment of up to fifteen years. s. 775.082(3)(c), F.S. Through omission in this bill, commodities violations remain punishable as third degree felonies. s. 517.275, F.S.

This bill provides for an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² The ten firms charged in this case agreed to pay a total of \$875 million nationally in disgorgement and penalties. The historically notable settlement included individual penalties that were some of the highest ever imposed in civil enforcement actions under the securities laws.

³ See s. 517.275, F.S., relating to commodities violations regulated federally through the Federal Commodity Exchange Act, 7 U.S.C. ss.1 et seq.; s. 517.301, F.S., relating to fraudulent transactions; s. 517.311, F.S., relating to false representations in issuing or selling securities; and s. 517.312, F.S., providing for rescission and recovery of damages for fraudulent transactions, false representations and unlawful boiler room practices. s. 517.021 (3), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill enables consumers to contact the Office of the Attorney General directly to request investigations of securities fraud. This bill does not preclude consumers from also filing a complaint with the OFR. This may result in a slight increase in the number of securities fraud cases.

Under this bill, violators of securities laws are subject to increased fines and criminal penalties.

C. Government Sector Impact:

This bill provides another avenue for consumers to file complaints based on violations of securities transactions laws. This may streamline the process.

The increase in maximum administrative fines could result in collection of additional fines by the OFR for deposit into the Anti-Fraud Trust Fund. Also, the new authority for the AG to recover civil penalties may result in additional revenue to the State.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Amendments:

None.