

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2226

SPONSOR: Banking and Insurance Committee and Senator Sebesta

SUBJECT: Sale of Securities

DATE: April 5, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 2226 amends s. 517.211, F.S., to narrow the scope of violations by a securities dealer that would allow for purchasers to rescind the purchase. Currently, any violation of s. 517.12, F.S., allows a purchaser to rescind the transaction. This includes sale by a dealer or associated person who is not registered with the Department of Banking and Finance, but it also includes sale by a securities dealer who has failed to timely renew his or her registration and certain other violations of ministerial sections. The bill limits the scope of violations to a violation of s. 517.12 (1), (4), (5), (9), (11), (13), (16), or (18), F.S.

This bill amends section 517.211 of the Florida Statutes.

II. Present Situation:

Currently, s. 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 of Banking and Finance. 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.

More particularly, the law allows a purchaser to rescind for any sale “made in violation of s. 517.12, [F.S.]” According to s. 517.12, F.S.:

- ◆ (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 shall 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.
- ◆ (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 shall 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 shall file reports with the department. These records are confidential and exempt from s. 119.07(1), F.S., 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 shall 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., 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., 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. . . ."

III. Effect of Proposed Changes:

Section 1. Amends s. 517.211, F.S., to narrow the scope of violations by a securities dealer and associated persons that would allow for purchasers to rescind the purchase of a security. Thus, it would narrow the scope of remedies available to purchasers of securities for certain violations. The bill provides that every sale made in violation of s. 517.12(1), (4), (5), (9), (11), (13), (16), or (18), F.S., may be rescinded at the election of the purchaser, except for certain violations of subsections (11) and (13). The current law states that a sale made in violation of any part of s. 517.12, F.S., may be rescinded.

Section 517.12 (1), F.S., states that no dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, by mail or otherwise, unless the person has been registered with the department. An associated person shall not be registered unless the dealer or investment advisor with which the applicant seeks registration, is also lawfully registered with the department. Subsection (4) provides that no investment advisor or associated person of an investment advisor shall engage in business from offices in this state, or render investment advice to persons of this state, unless the investment advisor and associated persons have been registered with the department. Subsection (5) states that a dealer or investment advisor may not conduct business from a branch office, unless the branch is registered with the department. As provided in subsection (9), the department may require the maintenance of a minimum net capital for registered dealers and investment advisors.

Under subsection (11), the department shall register an applicant found to be of good repute and character, who has complied with the provisions of this section and chapter. It also states that the registration of a dealer, investment advisor or associated person expires on December 31 of each year, unless the registrant has renewed its registration before that date. A branch office must renew its registration before March 31 each year. Only a violation of the portion of this subsection relating to renewal of a branch office registration is exempted from the rescission remedy of the purchaser.

Subsection (13), addresses technical changes in registration of which the department must be notified. It also requires that the department be notified, and an application for registration be completed, if a person or a group of persons proposes to purchase or acquire a controlling interest in a registered dealer or investment advisor. Only the change of address requirement is exempted from the purchaser's rescission remedies under the section.

Subsection (16) requires that applicants for initial or renewal registration as a securities dealer must be registered as a broker or dealer with the Securities and Exchange Commission. Subsection (18) states that dealers and associated persons must comply with continuing education requirements as established by department rule.

The committee substitute limits the remedies available to investors in situations where the dealer, associated person or investment advisor failed to comply with the various provisions of s. 517.12, F.S. It retains 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.

The sections of 517.12, F.S., 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., are more substantive in nature and are designed to protect investors, such as branch office registrations, maintenance of minimum net capital requirements, change of control of the registrant, insurance coverage by the Securities Investor Protection Corporation, and satisfying continuing education requirements.

Section 2. The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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.

C. Government Sector Impact:

The Department of Banking and Finance has estimated no fiscal impact from the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.