

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: CS/SB 1630

SPONSOR: Criminal Justice Committee and Senators Fasano and Argenziano

SUBJECT: Securities Transactions

DATE: April 3, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	CM	_____
4.	_____	_____	ACJ	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute amends s. 517.191, F.S., to provide specific authority for the Attorney General to investigate violations of the securities laws, specifically, ss. 517.275, 517.301, 517.311, and 517.312, F.S., and to bring civil action for injunctive relief, restitution, and civil penalties not to exceed \$10,000 per violation.

The CS also amends s. 517.221, F.S., to increase the maximum administrative fine that can be imposed by the Department of Banking and Finance for violations of securities laws to \$10,000 from \$5,000.

Finally, the CS amends s. 517.302, F.S., to increase the offense severity ranking for certain offenses against the securities transactions laws. A violation of ss. 517.275, 517.301, or 517.311, F.S., is reclassified from a third degree felony with a Level 1 ranking to a second degree felony with a Level 4 ranking.

This bill substantially amends the following sections of the Florida Statutes: 517.191, 517.221, and 517.302.

II. Present Situation:

Enforcement Authority – Chapter 517, F.S., is the Florida Securities and Investor Protection Act. The Department of Banking and Finance has authority for civil enforcement of the Act. 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.

Administrative Fines – Pursuant to s. 517.221(3), F.S., the Department of Banking and Finance is authorized to impose and collect an administrative fine not in excess of \$5,000 against any person who is found to have violated any provision of Chapter 517, F.S., any rule or order of the department, or any agreement entered into between the person and the department. The statute mandates that collected fines be deposited into the Anti-Fraud Trust Fund. The trust fund is also funded by collection of costs of investigation and prosecution that may be assessed by courts pursuant to 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 department indicates that administrative fines are the primary source of income for the trust fund. In FY 2000-2001, \$348,000 was deposited into the trust fund; in FY 2001-2002, \$288,000 was deposited. This fiscal year, \$2.8 million has been deposited due to the collection of an atypically large fine. According to the department, the major expense of the trust fund is payment of expert witness fees. The trust fund is also the source of funding for three positions involved in complex litigation of securities fraud cases.

Criminal Penalties – Violation of any criminal provision of Chapter 517, F.S., is a third degree felony with a Level 1 offense severity ranking.

III. **Effect of Proposed Changes:**

Enforcement Authority – This CS creates s. 517.191(4), F.S., to provide authority for the Attorney General to conduct investigations when it appears that there may be a violation of ss. 517.275, 517.301, 517.311, or 517.312, F.S., or any rule or order issued thereunder. This investigation could be initiated with or without receipt of a complaint. The Attorney General's investigative powers would be the same as those given to the Department of Banking and Finance under ss. 517.201 and 517.2015, F.S.

If the Attorney General concludes that there has been a violation, the CS provides that the Attorney General may bring a civil action to obtain injunctive relief and restitution in accordance with the provisions of s. 517.191(1)-(3), F.S. In addition, the Attorney General may recover a civil penalty of not more than \$10,000 plus costs of the action, including reasonable attorney fees.

Administrative Fines – The amendment to s. 517.221(3), F.S., increases the maximum administrative fine that can be imposed by the Department of Banking and Finance for violations of securities laws from \$5000 to \$10,000.

Criminal Penalties – This CS amends s. 517.302(1), F.S., to increase the offense severity ranking for violation of ss. 517.275, 517.301, and 517.311, F.S., from a Level 1 third degree felony to a Level 4 second degree felony. The increase from a Level 1 offense severity ranking to a Level 4 offense severity ranking will not automatically result in a state prison sentence, but will make a prison sentence more likely depending on the offender's prior record and whether there are any additional offenses.

Effective Date – The CS provides an effective date of July 1, 2003.

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:

Securities law violators are subject to increased administrative fines and a new civil penalty.

C. Government Sector Impact:

The Criminal Justice Impact Conference has indicated that the changes in offense level would not have a significant impact on the state prison system.

The increase in the maximum administrative fine could result in collection of additional fines by the Department of Banking and Finance for deposit into the Anti-Fraud Trust Fund. Also, the new authority for the Attorney General to recover civil penalties may result in additional revenue to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.