

By Senator Villalobos

38-1166-04

1 A bill to be entitled
 2 An act relating to securities and financial
 3 transactions; amending s. 16.56, F.S.;
 4 expanding the jurisdiction of the Office of
 5 Statewide Prosecution to authorize the office
 6 to investigate and prosecute offenses related
 7 to securities transactions under ch. 517, F.S.,
 8 and offenses related to financial transactions
 9 under ch. 896, F.S.; amending s. 517.191, F.S.;
 10 authorizing the Attorney General to investigate
 11 and prosecute certain offenses specified in ch.
 12 517, F.S., relating to securities transactions;
 13 providing for injunctive relief and
 14 restitution; providing a civil penalty;
 15 providing for attorney's fees and costs;
 16 amending s. 905.34, F.S.; extending the subject
 17 matter jurisdiction of a statewide grand jury
 18 to include offenses related to securities
 19 transactions under ch. 517, F.S., and offenses
 20 related to financial transactions under ch.
 21 896, F.S.; providing an effective date.

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

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 25 Section 1. Paragraph (a) of subsection (1) of section
 26 16.56, Florida Statutes, is amended to read:

27 16.56 Office of Statewide Prosecution.--

28 (1) There is created in the Department of Legal
 29 Affairs an Office of Statewide Prosecution. The office shall
 30 be a separate "budget entity" as that term is defined in
 31 chapter 216. The office may:

- 1 (a) Investigate and prosecute the offenses of:
2 1. Bribery, burglary, criminal usury, extortion,
3 gambling, kidnapping, larceny, murder, prostitution, perjury,
4 robbery, carjacking, and home-invasion robbery;
5 2. Any crime involving narcotic or other dangerous
6 drugs;
7 3. Any violation of the provisions of the Florida RICO
8 (Racketeer Influenced and Corrupt Organization) Act, including
9 any offense listed in the definition of racketeering activity
10 in s. 895.02(1)(a), providing such listed offense is
11 investigated in connection with a violation of s. 895.03 and
12 is charged in a separate count of an information or indictment
13 containing a count charging a violation of s. 895.03, the
14 prosecution of which listed offense may continue independently
15 if the prosecution of the violation of s. 895.03 is terminated
16 for any reason;
17 4. Any violation of the provisions of the Florida
18 Anti-Fencing Act;
19 5. Any violation of the provisions of the Florida
20 Antitrust Act of 1980, as amended;
21 6. Any crime involving, or resulting in, fraud or
22 deceit upon any person;
23 7. Any violation of s. 847.0135, relating to computer
24 pornography and child exploitation prevention, or any offense
25 related to a violation of s. 847.0135;
26 8. Any violation of the provisions of chapter 815; ~~or~~
27 9. Any criminal violation of part I of chapter 499;
28 10. Any violation of the provisions of chapter 517; or
29 11. Any violation of the provisions of chapter 896,
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1 or any attempt, solicitation, or conspiracy to commit any of
2 the crimes specifically enumerated above. The office shall
3 have such power only when any such offense is occurring, or
4 has occurred, in two or more judicial circuits as part of a
5 related transaction, or when any such offense is connected
6 with an organized criminal conspiracy affecting two or more
7 judicial circuits.

8 Section 2. Section 517.191, Florida Statutes, is
9 amended to read:

10 517.191 Injunction to restrain violations; Attorney
11 General enforcement.--

12 (1) When it appears to the office, either upon
13 complaint or otherwise, that a person has engaged or is about
14 to engage in any act or practice constituting a violation of
15 this chapter or a rule or order hereunder, the office may
16 investigate; and whenever it shall believe from evidence
17 satisfactory to it that any such person has engaged, is
18 engaged, or is about to engage in any act or practice
19 constituting a violation of this chapter or a rule or order
20 hereunder, the office may, in addition to any other remedies,
21 bring action in the name and on behalf of the state against
22 such person and any other person concerned in or in any way
23 participating in or about to participate in such practices or
24 engaging therein or doing any act or acts in furtherance
25 thereof or in violation of this chapter to enjoin such person
26 or persons from continuing such fraudulent practices or
27 engaging therein or doing any act or acts in furtherance
28 thereof or in violation of this chapter. In any such court
29 proceedings, the office may apply for, and on due showing be
30 entitled to have issued, the court's subpoena requiring
31 forthwith the appearance of any defendant and her or his

1 employees, associated persons, or agents and the production of
2 documents, books, and records that may appear necessary for
3 the hearing of such petition, to testify or give evidence
4 concerning the acts or conduct or things complained of in such
5 application for injunction. In such action, the equity courts
6 shall have jurisdiction of the subject matter, and a judgment
7 may be entered awarding such injunction as may be proper.

8 (2) In addition to all other means provided by law for
9 the enforcement of any temporary restraining order, temporary
10 injunction, or permanent injunction issued in any such court
11 proceedings, the court shall have the power and jurisdiction,
12 upon application of the office, to impound and to appoint a
13 receiver or administrator for the property, assets, and
14 business of the defendant, including, but not limited to, the
15 books, records, documents, and papers appertaining thereto.
16 Such receiver or administrator, when appointed and qualified,
17 shall have all powers and duties as to custody, collection,
18 administration, winding up, and liquidation of said property
19 and business as shall from time to time be conferred upon her
20 or him by the court. In any such action, the court may issue
21 orders and decrees staying all pending suits and enjoining any
22 further suits affecting the receiver's or administrator's
23 custody or possession of the said property, assets, and
24 business or, in its discretion, may with the consent of the
25 presiding judge of the circuit require that all such suits be
26 assigned to the circuit court judge appointing the said
27 receiver or administrator.

28 (3) In addition to any other remedies provided by this
29 chapter, the office may apply to the court hearing this matter
30 for an order of restitution whereby the defendants in such
31 action shall be ordered to make restitution of those sums

1 shown by the office to have been obtained by them in violation
2 of any of the provisions of this chapter. Such restitution
3 shall, at the option of the court, be payable to the
4 administrator or receiver appointed pursuant to this section
5 or directly to the persons whose assets were obtained in
6 violation of this chapter.

7 (4) In addition to all other means provided by law for
8 enforcing any of the provisions of this chapter, when it
9 appears to the Attorney General upon complaint or otherwise
10 that a person has engaged or is engaged in any act or practice
11 constituting a violation of s. 517.275, s. 517.301, s.
12 517.311, or s. 517.312, or any rule or order issued
13 thereunder, the Attorney General may conduct an investigation
14 in the same manner as provided in ss. 517.201 and 517.2015.
15 Whenever the Attorney General believes from evidence
16 satisfactory to the Attorney General that any such person has
17 engaged or is engaged in any act or practice constituting a
18 violation of s. 517.275, s. 517.301, s. 517.311, or s.
19 517.312, or any rule or order issued thereunder, the Attorney
20 General may bring an action against such person, and any other
21 person concerned in or in any way participating in such act or
22 practice or engaging therein or doing any act in furtherance
23 thereof, to obtain injunctive relief and restitution as
24 provided in subsections (1), (2), and (3) and to recover from
25 each person a civil penalty of not more than \$10,000 for each
26 violation, plus the cost of such action, including attorney's
27 fees.

28 Section 3. Section 905.34, Florida Statutes, is
29 amended to read:

30 905.34 Powers and duties; law applicable.--The
31 jurisdiction of a statewide grand jury impaneled under this

1 chapter shall extend throughout the state. The subject matter
2 jurisdiction of the statewide grand jury shall be limited to
3 the offenses of:

4 (1) Bribery, burglary, carjacking, home-invasion
5 robbery, criminal usury, extortion, gambling, kidnapping,
6 larceny, murder, prostitution, perjury, and robbery;

7 (2) Crimes involving narcotic or other dangerous
8 drugs;

9 (3) Any violation of the provisions of the Florida
10 RICO (Racketeer Influenced and Corrupt Organization) Act,
11 including any offense listed in the definition of racketeering
12 activity in s. 895.02(1)(a), providing such listed offense is
13 investigated in connection with a violation of s. 895.03 and
14 is charged in a separate count of an information or indictment
15 containing a count charging a violation of s. 895.03, the
16 prosecution of which listed offense may continue independently
17 if the prosecution of the violation of s. 895.03 is terminated
18 for any reason;

19 (4) Any violation of the provisions of the Florida
20 Anti-Fencing Act;

21 (5) Any violation of the provisions of the Florida
22 Antitrust Act of 1980, as amended;

23 (6) Any violation of the provisions of chapter 815;

24 (7) Any crime involving, or resulting in, fraud or
25 deceit upon any person;

26 (8) Any violation of s. 847.0135, s. 847.0137, or s.
27 847.0138 relating to computer pornography and child
28 exploitation prevention, or any offense related to a violation
29 of s. 847.0135, s. 847.0137, or s. 847.0138; ~~or~~

30 (9) Any criminal violation of part I of chapter 499;

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1 (10) Any violation of the provisions of chapter 517;
2 or
3 (11) Any violation of the provisions of chapter 896,
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5 or any attempt, solicitation, or conspiracy to commit any
6 violation of the crimes specifically enumerated above, when
7 any such offense is occurring, or has occurred, in two or more
8 judicial circuits as part of a related transaction or when any
9 such offense is connected with an organized criminal
10 conspiracy affecting two or more judicial circuits. The
11 statewide grand jury may return indictments and presentments
12 irrespective of the county or judicial circuit where the
13 offense is committed or triable. If an indictment is
14 returned, it shall be certified and transferred for trial to
15 the county where the offense was committed. The powers and
16 duties of, and law applicable to, county grand juries shall
17 apply to a statewide grand jury except when such powers,
18 duties, and law are inconsistent with the provisions of ss.
19 905.31-905.40.

20 Section 4. This act shall take effect July 1, 2004.

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23 SENATE SUMMARY

24 Expands the offenses related to securities transactions
25 under ch. 517, F.S., and financial transactions under ch.
26 896, F.S., which the Office of the Statewide Prosecution
27 may investigate and prosecute. Provides that the Attorney
28 General may investigate and prosecute certain offenses
29 specified in ch. 517, F.S., relating securities
30 transactions. Provides for injunctive relief and
31 restitution. Provides a civil penalty. Extends the
 subject matter jurisdiction of a statewide grand jury to
 include offenses related to securities transactions under
 ch. 517, F.S., and financial transactions under ch. 896,
 F.S.