

By Senator Fasano

11-124-04

1 A bill to be entitled
 2 An act relating to securities transactions;
 3 amending s. 517.191, F.S.; authorizing the
 4 Attorney General to enforce certain provisions,
 5 initiate certain actions, and bring civil
 6 actions to recover civil penalties, costs, and
 7 attorney's fees; amending s. 517.221, F.S.;
 8 increasing the administrative penalties for
 9 certain violations; amending s. 517.302, F.S.;
 10 increasing the criminal penalty for violations
 11 of specified sections of ch. 517, F.S.;
 12 providing an effective date.

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

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16 Section 1. Section 517.191, Florida Statutes, is
 17 amended to read:

18 517.191 Injunction to restrain violations; enforcement
 19 by the Attorney General.--

20 (1) When it appears to the office, either upon
 21 complaint or otherwise, that a person has engaged or is about
 22 to engage in any act or practice constituting a violation of
 23 this chapter or a rule or order hereunder, the office may
 24 investigate; and whenever it shall believe from evidence
 25 satisfactory to it that any such person has engaged, is
 26 engaged, or is about to engage in any act or practice
 27 constituting a violation of this chapter or a rule or order
 28 hereunder, the office may, in addition to any other remedies,
 29 bring action in the name and on behalf of the state against
 30 such person and any other person concerned in or in any way
 31 participating in or about to participate in such practices or

1 engaging therein or doing any act or acts in furtherance
2 thereof or in violation of this chapter to enjoin such person
3 or persons from continuing such fraudulent practices or
4 engaging therein or doing any act or acts in furtherance
5 thereof or in violation of this chapter. In any such court
6 proceedings, the office may apply for, and on due showing be
7 entitled to have issued, the court's subpoena requiring
8 forthwith the appearance of any defendant and her or his
9 employees, associated persons, or agents and the production of
10 documents, books, and records that may appear necessary for
11 the hearing of such petition, to testify or give evidence
12 concerning the acts or conduct or things complained of in such
13 application for injunction. In such action, the equity courts
14 shall have jurisdiction of the subject matter, and a judgment
15 may be entered awarding such injunction as may be proper.

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

1 business or, in its discretion, may with the consent of the
2 presiding judge of the circuit require that all such suits be
3 assigned to the circuit court judge appointing the said
4 receiver or administrator.

5 (3) In addition to any other remedies provided by this
6 chapter, the office may apply to the court hearing this matter
7 for an order of restitution whereby the defendants in such
8 action shall be ordered to make restitution of those sums
9 shown by the office to have been obtained by them in violation
10 of any of the provisions of this chapter. Such restitution
11 shall, at the option of the court, be payable to the
12 administrator or receiver appointed pursuant to this section
13 or directly to the persons whose assets were obtained in
14 violation of this chapter.

15 (4) In addition to all other means provided by law for
16 the enforcement of any of the provisions of this chapter, when
17 it appears to the Attorney General, either upon complaint or
18 otherwise, that a person has engaged or is engaged in any act
19 or practice constituting a violation of s. 517.275, s.
20 517.301, s. 517.311 or s. 517.312, or any rule or order
21 thereunder, the Attorney General may conduct an investigation
22 in the same manner as provided under ss. 517.201 and 517.2015;
23 and whenever the Attorney General determines from evidence
24 satisfactory to the Attorney General that any such person has
25 engaged or is engaged in any act or practice constituting a
26 violation of s. 517.275, s. 517.301, s. 517.311 or s. 517.312,
27 or any rule or order thereunder, the Attorney General may
28 bring an action against such person, and any other person
29 concerned in or in any way participating in such act or
30 practice or engaging therein or doing any act or acts in
31 furtherance thereof, to obtain injunctive relief and

1 restitution as provided in subsections (1), (2), and (3) and
2 to recover from each person a civil penalty of not more than
3 \$10,000 for each such violation, plus the costs of such
4 action, including reasonable attorney's fees.

5 Section 2. Subsection (3) of section 517.221, Florida
6 Statutes, is amended to read:

7 517.221 Cease and desist orders.--

8 (3) The office may impose and collect an
9 administrative fine against any person found to have violated
10 any provision of this chapter, any rule or order promulgated
11 by the commission or office, or any written agreement entered
12 into with the office in an amount not to exceed \$10,000 ~~\$5,000~~
13 for each such violation. All fines collected under this
14 subsection hereunder shall be deposited as received in the
15 Anti-Fraud Trust Fund.

16 Section 3. Subsection (1) of section 517.302, Florida
17 Statutes, is amended to read:

18 517.302 Criminal penalties; alternative fine;
19 Anti-Fraud Trust Fund; time limitation for criminal
20 prosecution.--

21 (1)(a) Except as provided in paragraph (b), whoever
22 violates any of the provisions of this chapter commits is
23 ~~guilty of~~ a felony of the third degree, punishable as provided
24 in s. 775.082, s. 775.083, or s. 775.084.

25 (b) Whoever violates any of the provisions of s.
26 517.275, s. 517.301, or s. 517.311 commits a felony of the
27 second degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.084.

29 Section 4. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Authorizes the Attorney General to enforce certain provisions, initiate certain actions, and bring civil actions to recover civil penalties, costs, and attorneys' fees relating to securities transactions. Increases from \$5,000 to \$10,000 the administrative penalties for certain violations of securities law.