



978174

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/04/2009	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 245 - 682
and insert:

investment advisory services. Each applicant or any person listed on the application form or subsequent amendment to the application form shall file a complete set of fingerprints. A fingerprint card submitted to the office must be taken by an authorized law enforcement agency or in a manner approved by the commission or office by rule. The office shall submit the



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12 fingerprints to the Department of Law Enforcement for state
13 processing, and the Department of Law Enforcement shall forward
14 the fingerprints to the Federal Bureau of Investigation for
15 federal processing. The cost of the fingerprint processing may
16 be borne by the office, the employer, or the person subject to
17 the background check. The Department of Law Enforcement shall
18 submit an invoice to the office for the fingerprints received
19 each month. The office shall screen the background results to
20 determine if the applicant meets licensure requirements. The
21 commission may waive, by rule, the requirement that applicants
22 or any person listed on the application form ~~must~~ file a set of
23 fingerprints or the requirement that such fingerprints ~~must~~ be
24 processed by the Department of Law Enforcement or the Federal
25 Bureau of Investigation. The commission or office may require
26 information about any such applicant or person concerning such
27 matters as:

28 (a) His or her full name, and any other names by which he
29 or she may have been known, and his or her age, social security
30 number, photograph, qualifications, and educational and business
31 history.

32 (b) Any injunction or administrative order by a state or
33 federal agency, national securities exchange, or national
34 securities association involving a security or any aspect of the
35 securities business and any injunction or administrative order
36 by a state or federal agency regulating banking, insurance,
37 finance, or small loan companies, real estate, mortgage brokers,
38 or other related or similar industries, which injunctions or
39 administrative orders relate to such person.

40 (c) His or her conviction of, or plea of nolo contendere



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41 to, a criminal offense or his or her commission of any acts
42 which would be grounds for refusal of an application under s.
43 517.161.

44 (d) The names and addresses of other persons of whom the
45 office may inquire as to his or her character, reputation, and
46 financial responsibility.

47 (8) The commission or office may require the applicant or
48 one or more principals or general partners, or natural persons
49 exercising similar functions, or any associated person applicant
50 to successfully pass oral or written examinations. Because any
51 principal, manager, supervisor, or person exercising similar
52 functions shall be responsible for the acts of the associated
53 persons affiliated with a dealer ~~or investment adviser~~, the
54 examination standards may be higher for a dealer, office
55 manager, principal, or person exercising similar functions than
56 for a nonsupervisory associated person. The commission may waive
57 the examination process when it determines that such
58 examinations are not in the public interest. The office shall
59 waive the examination requirements for any person who has passed
60 any tests as prescribed in s. 15(b)(7) of the Securities
61 Exchange Act of 1934 that relates to the position to be filled
62 by the applicant.

63 (11) If the office finds that the applicant is of good
64 repute and character and has complied with the provisions of
65 this chapter and the rules made pursuant hereto, it shall
66 register the applicant. The registration of each dealer,
67 investment adviser, branch office, and associated person expires
68 on December 31 of the year the registration became effective
69 unless the registrant has renewed his or her registration on or



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70 before that date. The commission may establish by rule
71 procedures for renewing the registration of a branch office
72 through the Central Registration Depository. Registration may be
73 renewed by furnishing such information as the commission may
74 require, together with payment of the fee required in subsection
75 (10) for dealers, investment advisers, associated persons, or
76 branch offices and the payment of any amount lawfully due and
77 owing to the office pursuant to any order of the office or
78 pursuant to any agreement with the office. Any dealer,
79 investment adviser, ~~or~~ associated person, or branch office
80 registrant who has not renewed a registration by the time the
81 current registration expires may request reinstatement of such
82 registration by filing with the office, on or before January 31
83 of the year following the year of expiration, such information
84 as may be required by the commission, together with payment of
85 the fee required in subsection (10) for dealers, investment
86 advisers, ~~or~~ associated persons, or branch office and a late fee
87 equal to the amount of such fee. Any reinstatement of
88 registration granted by the office during the month of January
89 shall be deemed effective retroactive to January 1 of that year.

90 (15)

91 (b) In lieu of filing with the office the applications
92 specified in subsection (6), the fees required by subsection
93 (10), the renewals required by subsection (11), and the
94 termination notices required by subsection (12), the commission
95 may by rule establish procedures for the deposit of such fees
96 and documents with the Central Registration Depository or the
97 Investment Adviser Registration Depository of the Financial
98 Industry Regulatory Authority ~~National Association of Securities~~



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99 ~~Dealers, Inc.~~, as developed under contract with the North
100 American Securities Administrators Association, Inc.

101 Section 5. Subsection (3) is added to section 517.121,
102 Florida Statutes, to read:

103 517.121 Books and records requirements; examinations.-

104 (3) Registration under s. 517.12 may be immediately
105 suspended by the office if the registrant fails to provide to
106 the office, within 30 days after a written request, any of the
107 records required by this section and the rules adopted under
108 this section. The suspension may be rescinded if the registrant
109 submits the requested records to the office. For purposes of s.
110 120.60(6), failure to provide any of such records constitutes
111 immediate and serious danger to the public health, safety, and
112 welfare.

113 Section 6. Subsection (2) of section 517.1215, Florida
114 Statutes, is amended to read:

115 517.1215 Requirements, rules of conduct, and prohibited
116 business practices for investment advisors and their associated
117 persons.-

118 (2) The commission shall by rule establish rules of conduct
119 and prohibited business practices for investment advisors and
120 their associated persons. In adopting the rules, the commission
121 shall consider general industry standards as expressed in the
122 rules and regulations of the various federal and self-regulatory
123 agencies and regulatory associations, including, but not limited
124 to, the United States Securities and Exchange Commission, the
125 Financial Industry Regulatory Authority ~~National Association of~~
126 ~~Securities Dealers~~, and the North American Securities
127 Administrators Association.



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128 Section 7. Section 517.1217, Florida Statutes, is amended
129 to read:

130 517.1217 Rules of conduct and prohibited business practices
131 for dealers and their associated persons.—The commission by rule
132 may establish rules of conduct and prohibited business practices
133 for dealers and their associated persons. In adopting the rules,
134 the commission shall consider general industry standards as
135 expressed in the rules and regulations of the various federal
136 and self-regulatory agencies and regulatory associations,
137 including, but not limited to, the United States Securities and
138 Exchange Commission, the Financial Industry Regulatory Authority
139 ~~National Association of Securities Dealers~~, and the North
140 American Securities Administrators Association.

141 Section 8. Subsection (2) of section 517.131, Florida
142 Statutes, is amended to read:

143 517.131 Securities Guaranty Fund.—

144 (2) The Securities Guaranty Fund shall be disbursed as
145 provided in s. 517.141 to a person who is adjudged by a court of
146 competent jurisdiction to have suffered monetary damages as a
147 result of any of the following acts committed by a dealer,
148 investment adviser, or associated person who was licensed under
149 this chapter at the time the act was committed:

150 (a) A specific violation of s. 517.07.

151 (b) A specific violation of s. 517.301.

152 Section 9. Subsection (1) of section 517.141, Florida
153 Statutes, is amended to read:

154 517.141 Payment from the fund.—

155 (1) Any person who meets all of the conditions prescribed
156 in s. 517.131 may apply to the office for payment to be made to



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157 such person from the Securities Guaranty Fund in the amount
158 equal to the unsatisfied portion of such person's judgment or
159 \$10,000, whichever is less, but only to the extent and amount
160 reflected in the judgment as being actual or compensatory
161 damages, excluding postjudgment interest, costs, and attorney's
162 fees.

163 Section 10. Subsections (1) and (6) of section 517.161,
164 Florida Statutes, are amended to read:

165 517.161 Revocation, denial, or suspension of registration
166 of dealer, investment adviser, associated person, or branch
167 office.—

168 (1) Registration under s. 517.12 may be denied or any
169 registration granted may be revoked, restricted, or suspended by
170 the office if the office determines that such applicant or
171 registrant; any partner, member, officer, or director of the
172 applicant or registrant or any person having a similar status or
173 performing similar functions; or any person directly or
174 indirectly controlling the applicant or registrant:

175 (a) Has violated any provision of this chapter or any rule
176 or order made under this chapter;

177 (b) Has made a material false statement in the application
178 for registration;

179 (c) Has been guilty of a fraudulent act in connection with
180 rendering investment advice or in connection with any sale of
181 securities, has been or is engaged or is about to engage in
182 making fictitious or pretended sales or purchases of any such
183 securities or in any practice involving the rendering of
184 investment advice or the sale of securities which is fraudulent
185 or in violation of the law;



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186 (d) Has made a misrepresentation or false statement to, or
187 concealed any essential or material fact from, any person in the
188 rendering of investment advice or the sale of a security to such
189 person;

190 (e) Has failed to account to persons interested for all
191 money and property received;

192 (f) Has not delivered, after a reasonable time, to persons
193 entitled thereto securities held or agreed to be delivered by
194 the dealer, broker, or investment adviser, as and when paid for,
195 and due to be delivered;

196 (g) Is rendering investment advice or selling or offering
197 for sale securities through any associated person not registered
198 in compliance with the provisions of this chapter;

199 (h) Has demonstrated unworthiness to transact the business
200 of dealer, investment adviser, or associated person;

201 (i) Has exercised management or policy control over or
202 owned 10 percent or more of the securities of any dealer or
203 investment adviser that has been declared bankrupt, or had a
204 trustee appointed under the Securities Investor Protection Act;
205 or is, in the case of a dealer or investment adviser, insolvent;

206 (j) Has been convicted of, or has entered a plea of guilty
207 or nolo contendere to, regardless of whether adjudication was
208 withheld, a crime against the laws of this state or any other
209 state or of the United States or of any other country or
210 government which relates to registration as a dealer, investment
211 adviser, issuer of securities, associated person, or branch
212 office; which relates to the application for such registration;
213 or which involves moral turpitude or fraudulent or dishonest
214 dealing;



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215 (k) Has had a final judgment entered against her or him in
216 a civil action upon grounds of fraud, embezzlement,
217 misrepresentation, or deceit;
218 (l) Is of bad business repute;
219 (m) Has been the subject of any decision, finding, award,
220 injunction, suspension, prohibition, revocation, denial,
221 judgment, or administrative order by any court of competent
222 jurisdiction, administrative law judge, or by any state or
223 federal agency, national securities, commodities, or option
224 exchange, or national securities, commodities, or option
225 association, or any national securities, commodities, or options
226 dispute resolution forum, involving a violation of any federal
227 or state securities or commodities law or any rule or regulation
228 promulgated thereunder, or any rule or regulation of any
229 national securities, commodities, or options exchange or
230 national securities, commodities, or options association, or has
231 been the subject of any injunction or adverse administrative
232 order by a state or federal agency regulating banking,
233 insurance, finance or small loan companies, real estate,
234 mortgage brokers or lenders, money transmitters, or other
235 related or similar industries. For purposes of this subsection,
236 the office may not deny registration to any applicant who has
237 been continuously registered with the office for 5 years from
238 the date of entry of such decision, finding, injunction,
239 suspension, prohibition, revocation, denial, judgment, or
240 administrative order provided such decision, finding,
241 injunction, suspension, prohibition, revocation, denial,
242 judgment, or administrative order has been timely reported to
243 the office pursuant to the commission's rules. For purposes of



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244 this paragraph, the term "state" includes Canadian provinces,
245 and the term "national" includes other countries; or

246 (n) Made payment to the office for a registration or notice
247 filing with a check or electronic transmission of funds that is
248 dishonored by the applicant's, registrant's, or notice filer's
249 financial institution.

250 (6) Registration under s. 517.12 may be denied or any
251 registration granted may be suspended or restricted if an
252 applicant or registrant is charged, in a pending enforcement
253 action or pending criminal prosecution, with any conduct that
254 would authorize denial or revocation under subsection (1).
255 Registration under s. 517.12 may be suspended or restricted if a
256 registrant is arrested for any conduct that would authorize
257 revocation under subsection (1).

258 (a) Any denial of registration ordered under this
259 subsection shall be without prejudice to the applicant's ability
260 to reapply for registration.

261 (b) Any order of suspension or restriction under this
262 subsection shall:

263 1. Take effect only after a hearing, unless no hearing is
264 requested by the registrant or unless the suspension or
265 restriction is made in accordance with s. 120.60(6).

266 2. Contain a finding that evidence of a prima facie case
267 supports the charge made in the enforcement action or criminal
268 prosecution.

269 3. Operate for no longer than 10 days beyond receipt of
270 notice by the office of termination with respect to the
271 registrant of the enforcement action or criminal prosecution.

272 (c) For purposes of this subsection:



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273 1. The term "enforcement action" means any judicial
274 proceeding or any administrative proceeding where such judicial
275 or administrative proceeding is brought by an agency of the
276 United States or of any state to enforce or restrain violation
277 of any state or federal law, or any disciplinary proceeding
278 maintained by the Financial Industry Regulatory Authority
279 ~~National Association of Securities Dealers~~, the National Futures
280 Association, ~~the New York Stock Exchange~~, or any other similar
281 self-regulatory organization.

282 2. An enforcement action is pending at any time after
283 notice to the applicant or registrant of such action and is
284 terminated at any time after entry of final judgment or decree
285 in the case of judicial proceedings, final agency action in the
286 case of administrative proceedings, and final disposition by a
287 self-regulatory organization in the case of disciplinary
288 proceedings.

289 3. A criminal prosecution is pending at any time after
290 criminal charges are filed and is terminated at any time after
291 conviction, acquittal, or dismissal.

292 Section 11. Section 517.1611, Florida Statutes, is created
293 to read:

294 517.1611 Guidelines.—

295 (1) The commission shall adopt by rule disciplinary
296 guidelines applicable to each ground for disciplinary action
297 that may be imposed by the office.

298 (2) The disciplinary guidelines shall specify a range of
299 penalties based upon the severity and repetition of specific
300 offenses. The disciplinary guidelines shall: distinguish minor
301 violations from those that endanger the public health, safety,



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302 or welfare; provide reasonable notice to the public of penalties
303 that may be imposed for proscribed conduct; and ensure that
304 penalties are imposed in a consistent manner by the office.

305 (3) The commission shall identify mitigating and
306 aggravating circumstances by rule that allow the office to
307 impose a penalty other than that specified in the guidelines.

308 (4) The commission shall adopt rules setting forth
309 disqualifying periods pursuant to which an applicant will be
310 disqualified from eligibility for registration based upon
311 criminal convictions, pleas of nolo contendere, or pleas of
312 guilt, regardless of whether adjudication was withheld, by the
313 applicant; any partner, member, officer, or director of the
314 applicant or any person having a similar status or performing
315 similar functions; or any person directly or indirectly
316 controlling the applicant. Such disqualifying periods may
317 include a 15-year disqualifying period based upon felonies
318 involving moral turpitude, a 7-year disqualifying period based
319 upon all other felonies, and a 5-year disqualifying period based
320 upon misdemeanors that relate to registration as a dealer,
321 investment adviser, issuer of securities, associated person, or
322 branch office; that relate to the application for such
323 registration; or that involve moral turpitude or fraudulent or
324 dishonest dealing. The disqualifying period shall be imposed in
325 addition to the period set by the court order of determination.
326 The rule may also consider mitigating factors, an additional
327 waiting period based upon dates of imprisonment or community
328 supervision, an additional waiting period based upon commitment
329 of multiple crimes, and other factors reasonably related to the
330 consideration of an applicant's criminal history. An applicant



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331 is not eligible for registration until the expiration of the
332 disqualifying period set by rule. Section 112.011 does not apply
333 to the registration provisions under this chapter. Nothing in
334 this section changes or amends the grounds for denial under s.
335 517.161.

336 Section 12. Section 517.191, Florida Statutes, is amended
337 to read:

338 517.191 Injunction to restrain violations; enforcement by
339 Attorney General.—

340 (1) When it appears to the office, either upon complaint or
341 otherwise, that a person has engaged or is about to engage in
342 any act or practice constituting a violation of this chapter or
343 a rule or order hereunder, the office may investigate; and
344 whenever it shall believe from evidence satisfactory to it that
345 any such person has engaged, is engaged, or is about to engage
346 in any act or practice constituting a violation of this chapter
347 or a rule or order hereunder, the office may, in addition to any
348 other remedies, bring action in the name and on behalf of the
349 state against such person and any other person concerned in or
350 in any way participating in or about to participate in such
351 practices or engaging therein or doing any act or acts in
352 furtherance thereof or in violation of this chapter to enjoin
353 such person or persons from continuing such fraudulent practices
354 or engaging therein or doing any act or acts in furtherance
355 thereof or in violation of this chapter. In any such court
356 proceedings, the office may apply for, and on due showing be
357 entitled to have issued, the court's subpoena requiring
358 forthwith the appearance of any defendant and her or his
359 employees, associated persons, or agents and the production of



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360 documents, books, and records that may appear necessary for the
361 hearing of such petition, to testify or give evidence concerning
362 the acts or conduct or things complained of in such application
363 for injunction. In such action, the equity courts shall have
364 jurisdiction of the subject matter, and a judgment may be
365 entered awarding such injunction as may be proper.

366 (2) In addition to all other means provided by law for the
367 enforcement of any temporary restraining order, temporary
368 injunction, or permanent injunction issued in any such court
369 proceedings, the court shall have the power and jurisdiction,
370 upon application of the office, to impound and to appoint a
371 receiver or administrator for the property, assets, and business
372 of the defendant, including, but not limited to, the books,
373 records, documents, and papers appertaining thereto. Such
374 receiver or administrator, when appointed and qualified, shall
375 have all powers and duties as to custody, collection,
376 administration, winding up, and liquidation of said property and
377 business as shall from time to time be conferred upon her or him
378 by the court. In any such action, the court may issue orders and
379 decrees staying all pending suits and enjoining any further
380 suits affecting the receiver's or administrator's custody or
381 possession of the said property, assets, and business or, in its
382 discretion, may with the consent of the presiding judge of the
383 circuit require that all such suits be assigned to the circuit
384 court judge appointing the said receiver or administrator.

385 (3) In addition to, or in lieu of, any other remedies
386 provided by this chapter, the office may apply to the court
387 hearing this matter for an order directing the defendant to ~~of~~
388 ~~restitution whereby the defendants in such action shall be~~



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389 ~~ordered to~~ make restitution of those sums shown by the office to
390 have been obtained ~~by them~~ in violation of any of the provisions
391 of this chapter. The office has standing to request such
392 restitution on behalf of victims in cases brought by the office
393 under this chapter, regardless of the appointment of an
394 administrator or receiver under subsection (2) or an injunction
395 under subsection (1). Further, such restitution shall, at the
396 option of the court, be payable to the administrator or receiver
397 appointed pursuant to this section or directly to the persons
398 whose assets were obtained in violation of this chapter.

399 (4) In addition to any other remedies provided by this
400 chapter, the office may apply to the court hearing the matter
401 for, and the court shall have jurisdiction to impose, a civil
402 penalty against any person found to have violated any provision
403 of this chapter, any rule or order adopted by the commission or
404 office, or any written agreement entered into with the office in
405 an amount not to exceed \$10,000 for a natural person or \$25,000
406 for any other person, or the gross amount of any pecuniary gain
407 to such defendant for each such violation other than a violation
408 of s. 517.301 plus \$50,000 for a natural person or \$250,000 for
409 any other person, or the gross amount of any pecuniary gain to
410 such defendant for each violation of s. 517.301. All civil
411 penalties collected pursuant to this subsection shall be
412 deposited into the Anti-Fraud Trust Fund.

413 (5) In addition to all other means provided by law for
414 enforcing any of the provisions of this chapter, when it appears
415 to the Attorney General upon complaint or otherwise that a
416 person has engaged or is engaged in any act or practice
417 constituting a violation of s. 517.275, s. 517.301, s. 517.311,



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418 or s. 517.312, or any rule or order issued under such sections,
419 the Attorney General, after approval from the office, may
420 investigate and enforce the provisions of this section in the
421 same manner as provided in ss. 517.201, 517.2015, and 517.171.
422 Whenever the Attorney General has reason to believe that any
423 such person has engaged or is engaged in any act or practice
424 constituting a violation of s. 517.275, s. 517.301, s. 517.311,
425 or s. 517.312, or any rule or orders issued under such sections,
426 the Attorney General may bring an action against such person and
427 any other person in any way participating in such act or
428 practice or engaging in such act or practice or doing any act in
429 furtherance of such act or practice, to obtain injunctive
430 relief, restitution, civil penalties, and any remedies provided
431 for in this section. The Attorney General may recover any costs
432 and attorney fees related to the investigation or enforcement of
433 this section. Notwithstanding any other provision of law, moneys
434 recovered by the Attorney General for costs, attorney fees, and
435 civil penalties for a violation of s. 517.275, s. 517.301, s.
436 517.311, or s. 517.312, or any rule or order issued pursuant to
437 such sections, shall be deposited into the Legal Affairs
438 Revolving Trust Fund.

439 (6) This section does not limit the authority of the office
440 to bring an administrative action against any person that is the
441 subject of a civil action brought pursuant to this section or
442 limit the authority of the office to engage in investigations or
443 enforcement actions with the Attorney General.

444
445 ===== T I T L E A M E N D M E N T =====

446 And the title is amended as follows:



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447 Delete line 44
448 and insert:
449
450 enforcement costs and attorney fees; providing for the deposit
451 of certain recovered moneys into the Anti-Fraud Trust Fund;
452 providing for