

1 A bill to be entitled
2 An act relating to investor protection; amending s. 16.56,
3 F.S.; expanding jurisdiction of the Office of Statewide
4 Prosecution to investigate and prosecute certain
5 additional offenses; amending s. 517.021, F.S.; revising
6 definitions; amending s. 517.072, F.S.; exempting certain
7 transactions in viatical settlement investments from
8 certain registration requirements; specifying application
9 of certain provisions; amending s. 517.12, F.S.; revising
10 requirements for registration of dealers, associated
11 persons, investment advisers, and branch offices,
12 including fingerprinting requirements; amending s.
13 517.121, F.S.; authorizing the Office of Financial
14 Regulation to suspend registration for registrant failure
15 to provide certain records; providing for rescinding
16 suspensions; amending ss. 517.1215 and 517.1217, F.S.;
17 changing an agency reference; amending s. 517.131, F.S.;
18 revising a Securities Guaranty Fund disbursement
19 requirement; amending s. 517.141, F.S.; excluding
20 postjudgment interest from payments from the fund;
21 amending s. 517.161, F.S.; expanding the class of persons
22 related to or associated with an applicant or registrant
23 for which certain violations may result in adverse actions
24 taken against registrations; authorizing the office to
25 suspend a registration under certain circumstances;
26 creating s. 517.1611, F.S.; requiring the Financial
27 Services Commission to adopt rules for imposing
28 registration sanctions for certain violations by

29 | registrants and associated or related persons; requiring
30 | the commission to adopt rules for disqualifying
31 | registrants for certain periods of time for certain
32 | criminal actions; providing rules criteria; amending s.
33 | 517.191, F.S.; authorizing the office to apply to the
34 | court for orders directing restitution; authorizing the
35 | office to apply to the court to impose civil penalties for
36 | certain violations; specifying limitations; authorizing
37 | the Attorney General, with approval of the office, to
38 | investigate and enforce certain provisions; authorizing
39 | the Attorney General to bring certain actions for
40 | injunctive relief; authorizing the Attorney General to
41 | recover certain investigation and enforcement costs and
42 | attorney fees; providing for deposit of certain recovered
43 | moneys into the Legal Affairs Revolving Trust Fund;
44 | amending s. 517.221, F.S.; increasing the amount of
45 | certain administrative fines; authorizing the office to
46 | bar certain persons from submitting applications or
47 | notifications for a license or registration under certain
48 | circumstances; specifying nonapplication of time
49 | limitations to certain office enforcement actions;
50 | amending s. 517.275, F.S.; revising criteria for
51 | prohibited practices relating to commodities; amending s.
52 | 905.34, F.S.; expanding subject matter jurisdiction of the
53 | statewide grand jury to include certain additional
54 | offenses; providing an effective date.

55 |
56 | Be It Enacted by the Legislature of the State of Florida:

57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83

Section 1. Paragraphs (a) and (b) of subsection (1) of section 16.56, Florida Statutes, are amended to read:

16.56 Office of Statewide Prosecution.--

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

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

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

4. Any violation of the provisions of the Florida Anti-Fencing Act;

5. Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

HB 483

2009

84 6. Any crime involving, or resulting in, fraud or deceit
 85 upon any person;

86 7. Any violation of s. 847.0135, relating to computer
 87 pornography and child exploitation prevention, or any offense
 88 related to a violation of s. 847.0135 or any violation of
 89 chapter 827 where the crime is facilitated by or connected to
 90 the use of the Internet or any device capable of electronic data
 91 storage or transmission;

92 8. Any violation of the provisions of chapter 815;

93 9. Any criminal violation of part I of chapter 499;

94 10. Any violation of the provisions of the Florida Motor
 95 Fuel Tax Relief Act of 2004;

96 11. Any criminal violation of s. 409.920 or s. 409.9201;
 97 ~~or~~

98 12. Any crime involving voter registration, voting, or
 99 candidate or issue petition activities;

100 13. Any criminal violation of the Florida Money Laundering
 101 Act; or

102 14. Any criminal violation of the Florida Securities and
 103 Investor Protection Act;

104
 105 or any attempt, solicitation, or conspiracy to commit any of the
 106 crimes specifically enumerated above. The office shall have such
 107 power only when any such offense is occurring, or has occurred,
 108 in two or more judicial circuits as part of a related
 109 transaction, or when any such offense is connected with an
 110 organized criminal conspiracy affecting two or more judicial
 111 circuits. Information or indictments used in bringing criminal

112 cases in more than one judicial circuit shall contain general
 113 allegations stating the judicial circuits and counties in which
 114 crimes are alleged to have occurred or the judicial circuits and
 115 counties in which crimes affecting such circuits or counties are
 116 alleged to have been connected with an organized criminal
 117 conspiracy.

118 (b) Investigate and prosecute any crime enumerated in
 119 subparagraphs (a)1.-14. ~~(a)1.-12.~~ facilitated by or connected to
 120 the use of the Internet. Any such crime is a crime occurring in
 121 every judicial circuit within the state.

122 Section 2. Subsection (4), paragraph (a) of subsection
 123 (13), and subsection (23) of section 517.021, Florida Statutes,
 124 are amended to read:

125 517.021 Definitions.--When used in this chapter, unless
 126 the context otherwise indicates, the following terms have the
 127 following respective meanings:

128 (4) "Branch office" means any location in this state of a
 129 dealer or investment adviser at which one or more associated
 130 persons regularly conduct the business of rendering investment
 131 advice or effecting any transactions in, or inducing or
 132 attempting to induce the purchase or sale of, any security or
 133 any location that is held out as such. The commission may adopt
 134 by rule exceptions to this definition for dealers in order to
 135 maintain consistency with the definition of a branch office used
 136 by self-regulatory organizations authorized by the Securities
 137 and Exchange Commission, including, but not limited to, the
 138 Financial Industry Regulatory Authority ~~National Association of~~
 139 ~~Securities Dealers or the New York Stock Exchange.~~ The

HB 483

2009

140 commission may adopt by rule exceptions to this definition for
 141 investment advisers.

142 (13) (a) "Investment adviser" includes any person who
 143 receives for compensation, directly or indirectly, and engages
 144 for all or part of her or his time, directly or indirectly, or
 145 through publications or writings, in the business of advising
 146 others as to the value of securities or as to the advisability
 147 of investments in, purchasing of, or selling of securities,
 148 except a dealer whose performance of these services is solely
 149 incidental to the conduct of her or his business as a dealer and
 150 who receives no special compensation for such services.

151 (23) "Viatical settlement investment" means an agreement
 152 for the purchase, sale, assignment, transfer, devise, or bequest
 153 of all or any portion of a legal or equitable interest in a
 154 viaticated policy as defined in chapter 626. ~~The term does not~~
 155 ~~include:~~

156 ~~(a) The transfer or assignment of an interest in a~~
 157 ~~previously viaticated policy from a natural person who transfers~~
 158 ~~or assigns no more than one such interest in 1 calendar year.~~

159 ~~(b) The provision of stop-loss coverage to a viatical~~
 160 ~~settlement provider, financing entity, or related provider~~
 161 ~~trust, as those terms are defined in s. 626.9911, by an~~
 162 ~~authorized or eligible insurer.~~

163 ~~(c) The transfer or assignment of a viaticated policy from~~
 164 ~~a licensed viatical settlement provider to another licensed~~
 165 ~~viatical settlement provider, a related provider trust, a~~
 166 ~~financing entity, or a special purpose entity, as those terms~~
 167 ~~are defined in s. 626.9911, or to a contingency insurer provided~~

HB 483

2009

168 ~~that such transfer or assignment is not the direct or indirect~~
169 ~~promotion of any scheme or enterprise with the intent of~~
170 ~~violating or evading any provision of this chapter.~~

171 ~~(d) The transfer or assignment of a viaticated policy to a~~
172 ~~bank, trust company, savings institution, insurance company,~~
173 ~~dealer, investment company as defined in the Investment Company~~
174 ~~Act of 1940, pension or profit-sharing trust, or qualified~~
175 ~~institutional buyer as defined in United States Securities and~~
176 ~~Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), or to~~
177 ~~an accredited investor as defined by Rule 501 of Regulation D of~~
178 ~~the Securities Act Rules, provided such transfer or assignment~~
179 ~~is not for the direct or indirect promotion of any scheme or~~
180 ~~enterprise with the intent of violating or evading any provision~~
181 ~~of this chapter.~~

182 ~~(e) The transfer or assignment of a viaticated policy by a~~
183 ~~conservator of a viatical settlement provider appointed by a~~
184 ~~court of competent jurisdiction who transfers or assigns~~
185 ~~ownership of viaticated policies pursuant to that court's order.~~

186 Section 3. Section 517.072, Florida Statutes, is amended
187 to read:

188 517.072 Viatical settlement investments.--

189 (1) The exemptions provided for by ss. 517.051(6), (8),
190 and (10) do not apply to a viatical settlement investment.

191 (2) The offering of a viatical settlement investment is
192 not an exempt transaction under s. 517.061(2), (3), (8), (11),
193 and (18), regardless of whether the offering otherwise complies
194 with the conditions of that section, unless such offering is to
195 a qualified institutional buyer.

HB 483

2009

196 (3) The registration provisions of ss. 517.07 and 517.12
197 do not apply to any of the following transactions in viatical
198 settlement investments; however, such transactions in viatical
199 settlement investments are subject to the provisions of ss.
200 517.301, 517.311, and 517.312:

201 (a) The transfer or assignment of an interest in a
202 previously viaticated policy from a natural person who transfers
203 or assigns no more than one such interest in a single calendar
204 year.

205 (b) The provision of stop-loss coverage to a viatical
206 settlement provider, financing entity, or related provider
207 trust, as those terms are defined in s. 626.9911, by an
208 authorized or eligible insurer.

209 (c) The transfer or assignment of a viaticated policy from
210 a licensed viatical settlement provider to another licensed
211 viatical settlement provider, a related provider trust, a
212 financing entity, or a special purpose entity, as those terms
213 are defined in s. 626.9911, or to a contingency insurer,
214 provided such transfer or assignment is not the direct or
215 indirect promotion of any scheme or enterprise with the intent
216 of violating or evading any provision of this chapter.

217 (d) The transfer or assignment of a viaticated policy to a
218 bank, trust company, savings institution, insurance company,
219 dealer, investment company as defined in the Investment Company
220 Act of 1940, pension or profit-sharing trust, or qualified
221 institutional buyer as defined in United States Securities and
222 Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), or to
223 an accredited investor as defined by Rule 501 of Regulation D of

HB 483

2009

224 the Securities Act Rules, provided such transfer or assignment
225 is not for the direct or indirect promotion of any scheme or
226 enterprise with the intent of violating or evading any provision
227 of this chapter.

228 (e) The transfer or assignment of a viaticated policy by a
229 conservator of a viatical settlement provider appointed by a
230 court of competent jurisdiction who transfers or assigns
231 ownership of viaticated policies pursuant to that court's order.

232 Section 4. Subsections (7), (8), and (11) and paragraph
233 (b) of subsection (15) of section 517.12, Florida Statutes, are
234 amended to read:

235 517.12 Registration of dealers, associated persons,
236 investment advisers, and branch offices.--

237 (7) The application shall also contain such information as
238 the commission or office may require about the applicant; any
239 partner, member, officer, or director of the applicant or any
240 person having a similar status or performing similar functions;
241 any person directly or indirectly controlling the applicant; or
242 any employee of a dealer or of an investment adviser rendering
243 investment advisory services. Each applicant or any natural
244 person listed on the application form shall file a complete set
245 of fingerprints. A fingerprint card submitted to the office must
246 be taken by an authorized law enforcement agency or in a manner
247 approved by the commission or office by rule. The office shall
248 submit the fingerprints to the Department of Law Enforcement for
249 state processing, and the Department of Law Enforcement shall
250 forward the fingerprints to the Federal Bureau of Investigation
251 for federal processing. All fingerprint cards submitted to the

252 Department of Law Enforcement shall be entered into the
253 statewide automated fingerprint identification system authorized
254 by s. 943.05(2)(b). The office shall notify the Department of
255 Law Enforcement when a person whose fingerprint information is
256 retained by the Department of Law Enforcement is no longer
257 registered with the office. The cost of the fingerprint
258 processing may be borne by the office, the employer, or the
259 person subject to the background check. The Department of Law
260 Enforcement shall submit an invoice to the office for the
261 fingerprints received each month. The office shall screen the
262 background results to determine if the applicant meets licensure
263 requirements. The commission may waive, by rule, the requirement
264 that applicants must file a set of fingerprints or the
265 requirement that such fingerprints must be processed by the
266 Department of Law Enforcement or the Federal Bureau of
267 Investigation. The commission or office may require information
268 about any such applicant or person concerning such matters as:

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

273 (b) Any injunction or administrative order by a state or
274 federal agency, national securities exchange, or national
275 securities association involving a security or any aspect of the
276 securities business and any injunction or administrative order
277 by a state or federal agency regulating banking, insurance,
278 finance, or small loan companies, real estate, mortgage brokers,

HB 483

2009

279 or other related or similar industries, which injunctions or
280 administrative orders relate to such person.

281 (c) His or her conviction of, or plea of nolo contendere
282 to, a criminal offense or his or her commission of any acts
283 which would be grounds for refusal of an application under s.
284 517.161.

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

288 (8) The commission or office may require the applicant or
289 one or more principals or general partners, or natural persons
290 exercising similar functions, or any associated person applicant
291 to successfully pass oral or written examinations. Because any
292 principal, manager, supervisor, or person exercising similar
293 functions shall be responsible for the acts of the associated
294 persons affiliated with a dealer ~~or investment adviser~~, the
295 examination standards may be higher for a dealer, office
296 manager, principal, or person exercising similar functions than
297 for a nonsupervisory associated person. The commission may waive
298 the examination process when it determines that such
299 examinations are not in the public interest. The office shall
300 waive the examination requirements for any person who has passed
301 any tests as prescribed in s. 15(b)(7) of the Securities
302 Exchange Act of 1934 that relates to the position to be filled
303 by the applicant.

304 (11) If the office finds that the applicant is of good
305 repute and character and has complied with the provisions of
306 this chapter and the rules made pursuant hereto, it shall

HB 483

2009

307 register the applicant. The registration of each dealer,
308 investment adviser, branch office, and associated person expires
309 on December 31 of the year the registration became effective
310 unless the registrant has renewed his or her registration on or
311 before that date. The commission may establish by rule
312 procedures for renewing the registration of a branch office
313 through the Central Registration Depository. Registration may be
314 renewed by furnishing such information as the commission may
315 require, together with payment of the fee required in subsection
316 (10) for dealers, investment advisers, associated persons, or
317 branch offices and the payment of any amount lawfully due and
318 owing to the office pursuant to any order of the office or
319 pursuant to any agreement with the office. Any dealer,
320 investment adviser, ~~or~~ associated person, or branch office
321 registrant who has not renewed a registration by the time the
322 current registration expires may request reinstatement of such
323 registration by filing with the office, on or before January 31
324 of the year following the year of expiration, such information
325 as may be required by the commission, together with payment of
326 the fee required in subsection (10) for dealers, investment
327 advisers, ~~or~~ associated persons, or branch office and a late fee
328 equal to the amount of such fee. Any reinstatement of
329 registration granted by the office during the month of January
330 shall be deemed effective retroactive to January 1 of that year.

331 (15)

332 (b) In lieu of filing with the office the applications
333 specified in subsection (6), the fees required by subsection
334 (10), the renewals required by subsection (11), and the

335 termination notices required by subsection (12), the commission
 336 may by rule establish procedures for the deposit of such fees
 337 and documents with the Central Registration Depository or the
 338 Investment Adviser Registration Depository of the Financial
 339 Industry Regulatory Authority ~~National Association of Securities~~
 340 ~~Dealers, Inc.~~, as developed under contract with the North
 341 American Securities Administrators Association, Inc.

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

344 517.121 Books and records requirements; examinations.--

345 (3) Registration under s. 517.12 may be immediately
 346 suspended by the office if the registrant fails to provide to
 347 the office, within 30 days after a written request, any of the
 348 records required by this section and the rules adopted under
 349 this section. The suspension may be rescinded if the registrant
 350 submits the requested records to the office. For purposes of s.
 351 120.60(6), failure to provide any of such records constitutes
 352 immediate and serious danger to the public health, safety, and
 353 welfare.

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

356 517.1215 Requirements, rules of conduct, and prohibited
 357 business practices for investment advisors and their associated
 358 persons.--

359 (2) The commission shall by rule establish rules of
 360 conduct and prohibited business practices for investment
 361 advisers and their associated persons. In adopting the rules,
 362 the commission shall consider general industry standards as

HB 483

2009

363 | expressed in the rules and regulations of the various federal
 364 | and self-regulatory agencies and regulatory associations,
 365 | including, but not limited to, the United States Securities and
 366 | Exchange Commission, the Financial Industry Regulatory Authority
 367 | ~~National Association of Securities Dealers~~, and the North
 368 | American Securities Administrators Association.

369 | Section 7. Section 517.1217, Florida Statutes, is amended
 370 | to read:

371 | 517.1217 Rules of conduct and prohibited business
 372 | practices for dealers and their associated persons.--The
 373 | commission by rule may establish rules of conduct and prohibited
 374 | business practices for dealers and their associated persons. In
 375 | adopting the rules, the commission shall consider general
 376 | industry standards as expressed in the rules and regulations of
 377 | the various federal and self-regulatory agencies and regulatory
 378 | associations, including, but not limited to, the United States
 379 | Securities and Exchange Commission, the Financial Industry
 380 | Regulatory Authority ~~National Association of Securities Dealers~~,
 381 | and the North American Securities Administrators Association.

382 | Section 8. Subsection (2) of section 517.131, Florida
 383 | Statutes, is amended to read:

384 | 517.131 Securities Guaranty Fund.--

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

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

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

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

395 517.141 Payment from the fund.--

396 (1) Any person who meets all of the conditions prescribed
397 in s. 517.131 may apply to the office for payment to be made to
398 such person from the Securities Guaranty Fund in the amount
399 equal to the unsatisfied portion of such person's judgment or
400 \$10,000, whichever is less, but only to the extent and amount
401 reflected in the judgment as being actual or compensatory
402 damages, excluding postjudgment interest, costs, and attorney's
403 fees.

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

406 517.161 Revocation, denial, or suspension of registration
407 of dealer, investment adviser, associated person, or branch
408 office.--

409 (1) Registration under s. 517.12 may be denied or any
410 registration granted may be revoked, restricted, or suspended by
411 the office if the office determines that such applicant or
412 registrant; any partner, member, officer, or director of the
413 applicant or registrant or any person having a similar status or
414 performing similar functions; or any person directly or
415 indirectly controlling the applicant or registrant:

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

418 (b) Has made a material false statement in the application
419 for registration;

420 (c) Has been guilty of a fraudulent act in connection with
421 rendering investment advice or in connection with any sale of
422 securities, has been or is engaged or is about to engage in
423 making fictitious or pretended sales or purchases of any such
424 securities or in any practice involving the rendering of
425 investment advice or the sale of securities which is fraudulent
426 or in violation of the law;

427 (d) Has made a misrepresentation or false statement to, or
428 concealed any essential or material fact from, any person in the
429 rendering of investment advice or the sale of a security to such
430 person;

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

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

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

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

442 (i) Has exercised management or policy control over or
443 owned 10 percent or more of the securities of any dealer or
444 investment adviser that has been declared bankrupt, or had a

445 trustee appointed under the Securities Investor Protection Act;
 446 or is, in the case of a dealer or investment adviser, insolvent;

447 (j) Has been convicted of, or has entered a plea of guilty
 448 or nolo contendere to, regardless of whether adjudication was
 449 withheld, a crime against the laws of this state or any other
 450 state or of the United States or of any other country or
 451 government which relates to registration as a dealer, investment
 452 adviser, issuer of securities, associated person, or branch
 453 office; which relates to the application for such registration;
 454 or which involves moral turpitude or fraudulent or dishonest
 455 dealing;

456 (k) Has had a final judgment entered against her or him in
 457 a civil action upon grounds of fraud, embezzlement,
 458 misrepresentation, or deceit;

459 (l) Is of bad business repute;

460 (m) Has been the subject of any decision, finding, award,
 461 injunction, suspension, prohibition, revocation, denial,
 462 judgment, or administrative order by any court of competent
 463 jurisdiction, administrative law judge, or by any state or
 464 federal agency, national securities, commodities, or option
 465 exchange, or national securities, commodities, or option
 466 association, or any national securities, commodities, or options
 467 dispute resolution forum, involving a violation of any federal
 468 or state securities or commodities law or any rule or regulation
 469 promulgated thereunder, or any rule or regulation of any
 470 national securities, commodities, or options exchange or
 471 national securities, commodities, or options association, or has
 472 been the subject of any injunction or adverse administrative

HB 483

2009

473 order by a state or federal agency regulating banking,
474 insurance, finance or small loan companies, real estate,
475 mortgage brokers or lenders, money transmitters, or other
476 related or similar industries. For purposes of this subsection,
477 the office may not deny registration to any applicant who has
478 been continuously registered with the office for 5 years from
479 the date of entry of such decision, finding, injunction,
480 suspension, prohibition, revocation, denial, judgment, or
481 administrative order provided such decision, finding,
482 injunction, suspension, prohibition, revocation, denial,
483 judgment, or administrative order has been timely reported to
484 the office pursuant to the commission's rules. For purposes of
485 this paragraph, the term "state" shall include Canadian
486 provinces, and the term "national" shall include other
487 countries; or

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

492 (6) Registration under s. 517.12 may be denied or any
493 registration granted may be suspended or restricted if an
494 applicant or registrant is charged, in a pending enforcement
495 action or pending criminal prosecution, with any conduct that
496 would authorize denial or revocation under subsection (1).
497 Registration under s. 517.12 may be suspended or restricted if a
498 registrant is arrested for any conduct that would authorize
499 revocation under subsection (1).

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

503 (b) Any order of suspension or restriction under this
 504 subsection shall:

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

508 2. Contain a finding that evidence of a prima facie case
 509 supports the charge made in the enforcement action or criminal
 510 prosecution.

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

514 (c) For purposes of this subsection:

515 1. The term "enforcement action" means any judicial
 516 proceeding or any administrative proceeding where such judicial
 517 or administrative proceeding is brought by an agency of the
 518 United States or of any state to enforce or restrain violation
 519 of any state or federal law, or any disciplinary proceeding
 520 maintained by the Financial Industry Regulatory Authority
 521 ~~National Association of Securities Dealers~~, the National Futures
 522 Association, ~~the New York Stock Exchange~~, or any other similar
 523 self-regulatory organization.

524 2. An enforcement action is pending at any time after
 525 notice to the applicant or registrant of such action and is
 526 terminated at any time after entry of final judgment or decree
 527 in the case of judicial proceedings, final agency action in the

HB 483

2009

528 case of administrative proceedings, and final disposition by a
529 self-regulatory organization in the case of disciplinary
530 proceedings.

531 3. A criminal prosecution is pending at any time after
532 criminal charges are filed and is terminated at any time after
533 conviction, acquittal, or dismissal.

534 Section 11. Section 517.1611, Florida Statutes, is created
535 to read:

536 517.1611 Guidelines.--

537 (1) The commission shall adopt rules setting forth
538 sanction guidelines for violations by a registrant of any
539 provision of this chapter or the rules adopted under this
540 chapter. Pursuant to such rules, registration may be suspended,
541 revoked, or restricted, or a fine may be imposed based upon
542 violations of provisions of this chapter or the rules adopted
543 under this chapter by the registrant; any partner, member,
544 officer, or director of the registrant or any person having a
545 similar status or performing similar functions; or any person
546 directly or indirectly controlling the registrant. Such
547 guidelines shall be based upon the severity and repetition of
548 specific offenses; distinguish minor violations from those that
549 endanger the public health, safety, or welfare; and provide
550 reasonable and meaningful notice to the public of likely
551 penalties that may be imposed for proscribed conduct and ensure
552 that such penalties are imposed in a consistent manner by the
553 office. The guidelines may be adjusted based on aggravating and
554 mitigating factors established by rule and consistent with this
555 purpose.

HB 483

2009

556 (2) The commission shall adopt rules setting forth
557 disqualifying periods pursuant to which an applicant will be
558 disqualified from eligibility for licensure based upon criminal
559 convictions, pleas of nolo contendere, or pleas of guilt,
560 regardless of whether adjudication was withheld, by the
561 applicant; any partner, member, officer, or director of the
562 applicant or any person having a similar status or performing
563 similar functions; or any person directly or indirectly
564 controlling the applicant. Such disqualifying periods may
565 include a 15-year disqualifying period based upon serious
566 felonies, a 7-year disqualifying period based upon all other
567 felonies, and a 5-year disqualifying period based upon
568 misdemeanors that relate to registration as a dealer, investment
569 adviser, issuer of securities, associated person, or branch
570 office; that relate to the application for such registration; or
571 that involve moral turpitude or fraudulent or dishonest dealing.
572 The disqualifying period shall be imposed in addition to the
573 period set by the court order of determination. The rule may
574 also consider mitigating factors, an additional waiting period
575 based upon dates of imprisonment or community supervision, an
576 additional waiting period based upon commitment of multiple
577 crimes, and other factors reasonably related to the
578 consideration of an applicant's criminal history. An applicant
579 is not eligible for registration until the expiration of the
580 disqualifying period set by rule. Section 112.011 shall not
581 apply to the registration provisions under this chapter. Nothing
582 in this section changes or amends the grounds for denial under
583 s. 517.161.

584 Section 12. Subsection (3) of section 517.191, Florida
 585 Statutes, is amended, and subsections (4) and (5) are added to
 586 that section to read:

587 517.191 Injunction to restrain violations; enforcement by
 588 Attorney General.--

589 (3) In addition to, or in lieu of, any other remedies
 590 provided by this chapter, the office may apply to the court
 591 hearing this matter for an order directing the defendant to ~~of~~
 592 ~~restitution whereby the defendants in such action shall be~~
 593 ~~ordered to~~ make restitution of those sums shown by the office to
 594 have been obtained ~~by them~~ in violation of any of the provisions
 595 of this chapter. The office has standing to request such
 596 restitution on behalf of victims in cases brought by the office
 597 under this chapter, regardless of the appointment of an
 598 administrator or receiver under subsection (2) or an injunction
 599 under subsection (1). Further, such restitution shall, at the
 600 option of the court, be payable to the administrator or receiver
 601 appointed pursuant to this section or directly to the persons
 602 whose assets were obtained in violation of this chapter.

603 (4) In addition to any other remedies provided by this
 604 chapter, the office may apply to the court hearing the matter
 605 for, and the court shall have jurisdiction to impose, a civil
 606 penalty against any person found to have violated any provision
 607 of this chapter, any rule or order adopted by the commission or
 608 office, or any written agreement entered into with the office in
 609 an amount not to exceed \$10,000 for a natural person or \$25,000
 610 for any other person, or the gross amount of any pecuniary gain
 611 to such defendant for each such violation other than a violation

612 of s. 517.301 plus \$50,000 for a natural person or \$250,000 for
613 any other person, or the gross amount of any pecuniary gain to
614 such defendant for each violation of s. 517.301.

615 (5) In addition to all other means provided by law for
616 enforcing any of the provisions of this chapter, when it appears
617 to the Attorney General upon complaint or otherwise that a
618 person has engaged or is engaged in any act or practice
619 constituting a violation of s. 517.275, s. 517.301, s. 517.311,
620 or s. 517.312, or any rule or order issued under such sections,
621 the Attorney General, after approval from the office, may
622 investigate and enforce the provisions of this section in the
623 same manner as provided in ss. 517.201, 517.2015, and 517.171.
624 Whenever the Attorney General has reason to believe that any
625 such person has engaged or is engaged in any act or practice
626 constituting a violation of s. 517.275, s. 517.301, s. 517.311,
627 or s. 517.312, or any rule or orders issued under such sections,
628 the Attorney General may bring an action against such person and
629 any other person in any way participating in such act or
630 practice or engaging in such act or practice or doing any act in
631 furtherance of such act or practice, to obtain injunctive
632 relief, restitution, civil penalties, and any remedies provided
633 for in this section. The Attorney General may recover any costs
634 and attorney fees related to the investigation or enforcement of
635 this section. Notwithstanding any other provision of law, moneys
636 recovered by the Attorney General for costs, attorney fees, and
637 civil penalties for a violation of this section shall be
638 deposited in the Legal Affairs Revolving Trust Fund.

HB 483

2009

639 Section 13. Subsection (3) of section 517.221, Florida
640 Statutes, is amended, and subsections (4) and (5) are added to
641 that section, to read:

642 517.221 Cease and desist orders.--

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

650 (4) The office may bar, permanently or for a specific time
651 period, any person found to have violated any provision of this
652 chapter, any rule or order adopted by the commission or office,
653 or any written agreement entered into with the office from
654 submitting an application or notification for a license or
655 registration with the office.

656 (5) Notwithstanding any limitations set forth in any
657 chapter other than this chapter, time limitations do not apply
658 to any enforcement actions brought by the office pursuant to its
659 authority under this chapter.

660 Section 14. Section 517.275, Florida Statutes, is amended
661 to read:

662 517.275 Commodities; prohibited practices.--It is unlawful
663 and a violation of this chapter for any person to engage in any
664 act or practice in or from this state, which act or practice
665 constitutes a violation of any provision of the Commodity
666 Exchange Act, 7 U.S.C. ss. 1 et seq., as amended, or the rules

HB 483

2009

667 and regulations of the Commodity Futures Trading Commission
668 adopted under that act as amended ~~upon the effective date of~~
669 ~~this act.~~

670 Section 15. Subsection (9) of section 905.34, Florida
671 Statutes, is amended, and subsections (11) and (12) are added to
672 that section to read:

673 905.34 Powers and duties; law applicable.--The
674 jurisdiction of a statewide grand jury impaneled under this
675 chapter shall extend throughout the state. The subject matter
676 jurisdiction of the statewide grand jury shall be limited to the
677 offenses of:

678 (9) Any criminal violation of part I of chapter 499; ~~or~~

679 (11) Any criminal violation of the Florida Money
680 Laundering Act; or

681 (12) Any criminal violation of the Florida Securities and
682 Investor Protection Act;

683
684 or any attempt, solicitation, or conspiracy to commit any
685 violation of the crimes specifically enumerated above, when any
686 such offense is occurring, or has occurred, in two or more
687 judicial circuits as part of a related transaction or when any
688 such offense is connected with an organized criminal conspiracy
689 affecting two or more judicial circuits. The statewide grand
690 jury may return indictments and presentments irrespective of the
691 county or judicial circuit where the offense is committed or
692 triable. If an indictment is returned, it shall be certified and
693 transferred for trial to the county where the offense was
694 committed. The powers and duties of, and law applicable to,

HB 483

2009

695 | county grand juries shall apply to a statewide grand jury except
696 | when such powers, duties, and law are inconsistent with the
697 | provisions of ss. 905.31-905.40.

698 | Section 16. This act shall take effect July 1, 2009.