

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1290

INTRODUCER: Senator Negron

SUBJECT: Criminal Penalties for Violations of Securities Laws

DATE: February 13, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Cellon | Cannon | CJ | Favorable |
| 2. | Johnson | Burgess | BI | Pre-meeting |
| 3. | _____ | _____ | BC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill amends the Criminal Punishment Code Offense Severity Ranking Chart, which sets forth the sentencing points that are scored for the listed felony offenses, as it relates to violations of the Florida Securities and Investor Protection Act. The bill increases the lowest permissible sentences for failure to register as a dealer, associated person, or issuer with the Office of Financial Regulation. It also increases the lowest permissible sentence for selling or offering to sell an unregistered security.

This bill substantially amends the following section of the Florida Statutes: 921.0022.

II. Present Situation:

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions, as well as finance companies, securities, and securities dealers in Florida. The OFR reports to the Financial Services Commission, which is comprised of the Governor and Cabinet.¹

Florida Securities and Investor Protection Act

Chapter 517, F.S., is entitled the “Florida Securities and Investor Protection Act” (act).² The purpose of the act is to protect the public from fraudulent and deceptive practices in the sale and

¹ Section 20.121(3), F.S.

² Section 517.011, F.S.

marketing of securities.³ This purpose is achieved principally by requiring the registration of securities and securities dealers, which provides potential investors with sufficient information to enable them to protect themselves.⁴ The OFR registers securities and securities dealers.⁵ The processes for registering are delineated in ss. 517.081, 517.082, 517.12, and 517.1201, F.S., which include requirements that OFR be provided an application, certain financial statements, and other specified information.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless the security is registered or exempt. In addition to being registered, s. 517.07(2), F.S., requires that a securities purchaser be furnished with a prospectus meeting the requirements of rules adopted by the Financial Services Commission.⁶ Violations of s. 517.07(1) and (2), F.S., are currently 3rd degree felonies, ranked in Level 2 of the Offense Severity Ranking Chart.⁷ A Level 2 offense equates to 10 sentencing points. Section 517.12(1), F.S., prohibits a dealer, associated person, or issuer⁸ of securities to sell or offer for sale any securities in or from offices in Florida, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with OFR.

In addition, chapter 517, F.S., prohibits the OFR from registering any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is registered with the OFR.⁹ A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.¹⁰ A Level 1 offense equates to 4 sentencing points.

The Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.¹¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.¹² As the offense level increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹³

A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record, and other aggravating factors.¹⁴ The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest

³ Section 517.021, F.S., defines the term "security."

⁴ 32 Fla. Jur 2d Investment Securities s. 122

⁵ Sections 517.081 and 517.12, F.S.

⁶ Section 21.121(3), F.S.

⁷ See ss. 517.302 and 921.0022(3)(b), F.S.

⁸ Section 517.021, F.S., defines the terms "dealer," "associated person," and "issuer."

⁹ Section 517.12(1), F.S.

¹⁰ See ss. 517.302 and 921.0022(3)(a), F.S.

¹¹ Section 921.002, F.S.

¹² Section 921.0022, F.S.

¹³ Section 921.0023, F.S.

¹⁴ Section 921.0024, F.S.

permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.¹⁵

III. Effect of Proposed Changes:

The bill increases the ranking of securities-related offenses in the Offense Severity Ranking Chart as follows:

- A violation of s. 517.07(1), F.S. (requiring certain securities to be registered prior to sale), increases from a Level 2 offense (equating to 10 sentencing points) to a Level 4 offense (equating to 22 sentencing points).
- A violation of s. 517.12(1), F.S. (requiring securities dealers, associated persons or issuers of securities to be registered), increases from a Level 1 offense (equating to 4 sentencing points) to a Level 4 offense (equating to 22 sentencing points).

As a result, the lowest permissible sentence for violations of ss. 517.07(1) and 517.12(1), F.S., will be increased.

The bill will take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁵ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony it is fifteen years and for a third degree felony the statutory maximum is five years. Section 775.082, F.S.

C. Government Sector Impact:

The increase in severity rankings for specified securities violations may increase the likelihood that prosecutors will pursue such cases.

The Criminal Justice Impact Conference met January 17, 2012, and determined this bill will have an insignificant impact on the state prison beds because of the low volume of individuals reported with this offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.