

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 777 Securities Law Violations
SPONSOR(S): Eisnaugle
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Williams	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	17 Y, 0 N	Williams	Havlicak

SUMMARY ANALYSIS

Chapter 517, F.S., entitled the "Florida Securities and Investor Protection Act" (FSIPA), is designed to protect the public from fraudulent and deceptive practices in the sale and marketing of securities. This purpose is achieved principally by requiring the registration of securities and securities dealers.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless they are registered. In addition to being registered, s. 517.07(2), F.S., requires that a securities purchaser be furnished with a prospectus meeting specified requirements. 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.

Section 517.12(1), F.S., makes it unlawful for a dealer, associated person, or issuer of securities to sell or offer for sale any securities in or from offices in Florida, or sell securities to persons in Florida from offices outside of Florida, by mail or otherwise, unless the person has been registered. A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.

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., goes from a Level 2 offense to a Level 4 offense; and
- A violation of s. 517.12(1), F.S., goes from a Level 1 offense to a Level 4 offense.

As a result, the lowest permissible sentence for these offenses will be increased.

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.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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, 1998.¹ 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.² 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.³

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.⁴ 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 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.⁵

Florida Securities and Investor Protection Act

Chapter 517, F.S., is entitled the "Florida Securities and Investor Protection Act" (FSIPA).⁶ The purpose of FSIPA is to protect the public from fraudulent and deceptive practices in the sale and marketing of securities.^{7,8} 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.⁹

The Office of Financial Regulation (OFR)¹⁰ is the entity responsible for registering securities and securities dealers.¹¹ The processes for registering are outlined 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.

¹ Section 921.002, F.S.

² Section 921.0022, F.S.

³ Section 921.0023, F.S.

⁴ Section 921.0024, F.S.

⁵ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. Section 775.082, F.S.

⁶ Section 517.011, F.S.

⁷ Section 517.021, F.S., defines the term "security" to include any of the following: notes, stocks, treasury stocks, bond, a debenture, an evidence of indebtedness, certificates of deposit, certificates of deposit for a security, certificates of interest or participation, whiskey warehouse receipts or other commodity warehouse receipts, certificates of interest in a profit-sharing agreement or the right to participate therein, certificates of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein, collateral trust certificates, reorganization certificates, preorganization subscriptions, transferable shares, investment contracts, a beneficial interest in title to property, profits, or earnings, an interest in or under a profit-sharing or participation agreement or scheme, any option contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time, other instruments commonly known as a security, including an interim or temporary bond, debenture, note, or certificate, receipts for a security, or for subscription to a security, or any right to subscribe to or purchase any security, and viatical settlement investments.

⁸ *Rushing v. Wells Fargo Bank, N.A.*, 752 F.Supp.2d 1254 (M.D. Fla. 2010); *Arthur Young & Co. v. Mariner Corp.*, 630 So.2d 1199, 1203 (Fla. 4th DCA 1994).

⁹ See 32 Fla. Jur 2d Investment Securities, Etc. s. 122.

¹⁰ The Office of Financial Regulation regulates the banking, finance and securities industries in Florida and is administratively housed within the Department of Financial Services. OFR is headed by a commissioner appointed by the Financial Services Commission, which consists of the Governor and Cabinet. See <http://www.flofr.com/Office/Aboutofr.aspx> (last visited on January 5, 2012).

¹¹ Sections 517.081 and 517.12, F.S.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless they are registered. 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. 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.¹² A Level 2 offense equates to 10 sentencing points.¹³

Section 517.12(1), F.S., specifies that no dealer, associated person, or issuer¹⁴ of securities shall 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, OFR is prohibited from registering any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to chapter 517, F.S.¹⁵ A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.¹⁶ A Level 1 offense equates to 4 sentencing points.¹⁷

In addition to the above-described unlawful acts, FSIPA contains many other provisions that prescribe unlawful behavior relating to securities.¹⁸ With one exception,¹⁹ these offenses are 3rd degree felonies, and except as provided above, are ranked in Level 1 of the Offense Severity Ranking Chart.²⁰

Effect of the Bill

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), goes 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, etc. to be registered), goes 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 2. Provides an effective date upon becoming a law.

¹² See ss. 517.302 and 921.0022(3)(b), F.S.

¹³ See s. 921.0024, F.S.

¹⁴ Section 517.021, F.S., defines the terms “dealer,” “associated person,” and “issuer.”

¹⁵ Section 517.12(1), F.S.

¹⁶ See ss. 517.302 and 921.0022(3)(a), F.S.

¹⁷ See s. 921.0024, F.S.

¹⁸ See, e.g., ss. 517.301, 517.311, and 517.312, F.S.

¹⁹ A person who violates s. 517.312(1), F.S., by obtaining money or property of an aggregate value exceeding \$50,000 from five or more persons is guilty of a 1st degree felony. Section 517.302(2), F.S.

²⁰ See ss. 517.302 and 921.0022(3)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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.

The Florida Department of Law Enforcement reported that there were 48 convictions for violations of s. 517.07(1), F.S., and 53 convictions for violations of s. 517.12(1), F.S., from 2006 - 2011.²¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²¹ Office of Financial Regulation Analysis on HB 777. January 6, 2012. (On file with House Criminal Justice Subcommittee staff).