

1984

## Session Law 84-159

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law #	84-159	Sec. #	9	LOF cite	
Prime Bill #	CS/HB 797	Comp./Sim. Bills	CS/SB 766, HB 861, CS/SB 887		
JL/MC Hist. Cites	Senate House	Comms. of Ref.	Senate House		

COMMITTEE RECORDS

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	v
H	Commerce	84	HB 797 - BILL FILE	19/1308	33
H	"	"	HB 861 - BILL FILE (4/4/84: 4/2/84)	19/1307	23
S	Commerce	84	SB 766 - BILL FILE (5/8/84)	13/1402	22
S	"	"	SB 887 - BILL FILE (5/1/84)	13/1403	29
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Senate/House Journals

Page #	?	Date	Page #	?	Date

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite
H	C	Commerce, sub-comm Banking & Com.	4/11/84		
H	C	" , Full Comm.	4/24/84		

Other Documentation

Record Series Title, folder title, etc.	Location Cite



House

4-16-84  
4-18-84

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P 5/15



LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year 1984	Session Law No. 84-159	LOF Cite	#pp
Prime Bill# HB 471	Sponsor	Comp./Sim. Bills 26807, 5, 10, 9, 2, 1	
JLMC Hist. Leg. Cites	Senate pp.#s 262, 3, 301	House pp.#s 260, 287	#pp
Committee of Ref.	Senate Committee	House Committee	Previous versions?

Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
4	Commerce	1984	SB 287	11/508	1
			SB 287	12/301	285
			SB 287	12/50	
			SB 287	10/1512	9
			SB 287	12/532	✓
5	Commerce	1984	Bill 287	15/1402	
			SB 287	18/1402	

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp

Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location Cite

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

1984 (84-159) FS 517.211, 517.301 } <sup>incl. 1-5</sup>  
 HB 797 - NOT in original BILL (in PCS 4/24) <sup>comm. 1-15, etc.</sup>  
 - in § sec. 3 (517.211 AMB)  
 - sec. 7 (517.301 AMB)

HCMR

SUB } 5.19/1310  
 Full }  
 BF 4/13, 12/1308  
 MF 7/29 (Full) 4/11 (Sub-Bank & Fin.)  
 Tapps sub(2) Full(4) S. 414/490  
 subj. —

NO SEN. CMT ACTION

SB 766 - in sec. 3 (517.211) - variant language  
 in sec 7 (517.301) - " "  
 - in § sec. 3 (517.211) same as (S/HB 797)  
 sec. 7 (517.301) " " "

SCMR

BF 12/1402  
 MF (5/8/84) 13/1401  
 Tapps still in cmt.  
 subj. —

Governor or any department under the jurisdiction of a Cabinet officer. Final approval as provided in subsection (2) shall be required prior to the expenditure of funds for private legal services by these agencies.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 11, 1984.

Filed in Office Secretary of State June 12, 1984.

CHAPTER 84-159

Committee Substitute for House Bill No. 797

An act relating to the Florida Securities Act; amending s. 517.011, F.S., redesignating the "Florida Securities Act" as the "Florida Investor Protection Act"; amending s. 517.021, F.S., providing and amending definitions; amending s. 517.051, F.S., relating to exempt securities; clarifying language and including federally chartered savings banks; amending s. 517.061, F.S., relating to exempt transactions; clarifying a citation; amending s. 517.12, F.S., relating to registration; including provisions relating to branch offices and associated persons; requiring dealers, investment advisers and branch offices to keep certain currency transaction records and file reports with the Department of Banking and Finance; amending s. 517.131, F.S.; renaming the Security Guaranty Fund; providing notice requirements; amending s. 517.141, F.S.; revising procedures for payment from the guaranty fund; deleting reference to salesmen and including associated persons; prohibiting payments before a specified period elapses; providing for multiple and joint claims; amending ss. 517.151 and 517.161, F.S.; correcting terminology; amending s. 517.211, F.S., relating to remedies available with respect to unlawful offers or sales of securities or investments; amending s. 517.241, F.S., relating to remedies; creating s. 517.251, F.S., providing for prohibited practices and remedies with respect to certain securities, investments, or boiler rooms; creating s. 517.275, F.S., relating to prohibited practices with respect to commodities; amending s. 517.301, F.S., relating to fraudulent transactions; amending s. 517.311, F.S., prohibiting certain false representation with respect to investments; providing for review and repeal; providing an effective date.

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

Section 1. Section 517.011, Florida Statutes, is amended to read:

517.011 Short title.--This chapter may be cited as the "Florida Investor Protection Securities Act."

Section 2. Section 517.021, Florida Statutes, is amended to read:

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

(1) "Accredited investor" means any person who comes within any of the following categories, or who an issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in s. 3(a)(2) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(2), whether acting in its individual or fiduciary capacity or any insurance company as defined in s. 2(13) of that act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in s. 2(a)(48) of that act; any small business investment company licensed by the United States Small Business Administration under s. 301(c) or (d) of the Small Business Investment Act of 1958; or any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in s. 3(21) of such act, which is either a bank, insurance company, or registered investment adviser or if the employee benefit plan has total assets in excess of \$5 million.

(b) Any private business development company as defined in s. 202(a)(22) of the Investment Advisers Act of 1940.

(c) Any organization described in s. 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5 million.

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold or any director, executive officer, or general partner of a general partner of that issuer.

(e) Any person who purchases at least \$150,000 worth of the securities being offered, when the price of the purchaser's total purchase does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following:

1. Cash.
2. Securities for which market quotations are readily available.
3. An unconditional obligation to pay cash or securities for which market quotations are readily available, which obligation is to be discharged within 5 years of the sale of the securities to the purchaser.
4. The cancellation of any indebtedness owed by the issuer to the purchaser.

(f) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1 million.

(g) Any natural person who had an individual income in excess of \$200,000 in each of the 2 most recent years and who reasonably expects an income in excess of \$200,000 in the current year.

(h) Any entity in which all of the equity owners are accredited investors under paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (f), or paragraph (g).

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(3) "Agent" means salesman as herein defined.

(4) "Associated person" means any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions or any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial.

(5) "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(6)(5) "Broker" means dealer as herein defined.

(7)(6) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8)(7) "Dealer" means any person, other than a salesman registered under this chapter, who engages, either for all or part of his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term "dealer" also includes any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by said issuer. The term "dealer" does not include any licensed practicing attorney who renders or performs any of said services in connection with the regular practice of his profession; any bank authorized to do business in this state, except nonbank subsidiaries of a bank; any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any wholesaler selling exclusively to dealers; any person buying and selling exclusively through a registered dealer or stock exchange; or, pursuant to s. 517.061(12), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.

(9)(8) "Department" means the Department of Banking and Finance.

(10) "Investment" means any commitment of money or property, not otherwise a security as defined in this chapter, in expectation of receiving an economic benefit, offered or sold in violation of s.

517.301 or s. 517.311, except that the term investment shall not apply to the following:

(a) "Business opportunity" as defined in the Sale of Business Opportunities Act, ss. 559.80-559.815;

(b) Lands subject to the jurisdiction of chapter 498; or

(c) The offer or sale of tangible personal property made in accordance with the following conditions:

1. There are no specific representations or guarantees made by the offeror or seller as to economic benefit to be derived from the purchase;

2. The tangible personal property is delivered to the purchaser within 30 days after sale, except that such thirty day period may be extended by the department if market conditions so warrant, and

3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that in no event shall the amount of such refund exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, then the amount of such refund shall be based on the bid price for such property at the next opening of such market.

(11)(9) "Investment adviser" means any person who for compensation engages for all or part of his time, directly, indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for such services. The term "investment adviser" does not include any licensed practicing attorney or certified public accountant who renders or performs any of said services in connection with the regular practice of his profession; any bank authorized to do business in this state; any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state; any trust company having trust powers which it is authorized to exercise in the state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any person who renders investment advice exclusively to insurance or investment companies; or any person who does not hold himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.

(12)(10) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(13)(11) "Offer to sell," "offer for sale," or "offer" means any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest therein, for value.

(14)(12) "Person" means a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, or an unincorporated organization.

(15)(13) "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(16)(14) "Sale" or "sell" means any contract of sale or disposition of any investment, a security, or interest in a security, for value. With respect to a security or interest in a security, the term defined in this subsection does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(17)(15) "Salesman" means any natural person, other than a dealer, employed, appointed, or authorized by a dealer or issuer to sell securities in any manner or act as an investment adviser as defined in this section. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer are not salesmen within the meaning of this definition.

(18)(16) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, whiskey warehouse receipt or other commodity warehouse receipt, or right to subscribe to any of the foregoing; certificate of interest in a profit-sharing agreement or the right to participate therein; certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease, or the right to participate therein; collateral trust certificate, reorganization certificate, preorganization subscription, or any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings; interests in or under a profit-sharing or participation agreement or scheme, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security.

(19)(17) "Securities option" means any 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.

(20)(18) "Underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or

sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; provided that a person shall be presumed not to be an underwriter with respect to any securities which he has owned beneficially for at least 1 year; and provided, further, that a dealer shall not be considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; provided, further, that in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person shall include the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

(21) "Branch office" means any office of a dealer or investment adviser located in this state other than the principal office of the dealer or investment adviser which is owned or controlled by the dealer or investment adviser for the purpose of conducting a securities business.

517.051 Exempt securities.--The registration provisions of s. 517.07 do not apply to any of the following securities.

(1) Any security issued or guaranteed by the United States or any territory or insular possession thereof, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof.

(3) Any security issued or guaranteed by:

(a) A national bank or a federally chartered savings and loan association or federally chartered savings bank, or the initial subscription for equity securities in such national bank or federally chartered savings and loan association or federally chartered savings bank;

Section 3. Subsection (20) of section 517.061, Florida Statutes, is hereby repealed, and paragraph (a) of subsection (19) of said section is amended to read:

517.061 Exempt transactions.--The registration provisions of s. 517.07 do not apply to any of the following transactions:

(19)(a) The offer or sale of securities pursuant to a registration statement filed under the federal Securities Act of 1933, provided that prior to the sale the registration statement has become effective and the department has received:

1. A notice of intention to sell which has been executed by the issuer, any other person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person and which sets forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered in this state;

2. Copies of such documents filed with the Securities and Exchange Commission as the department may by rule require; and

3. ~~An irrevocable written consent similar to that provided as required by s. 517.101.~~

Section 4. Section 517.12, Florida Statutes, is amended to read:

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

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities in this state to persons thereof from offices outside this state, by mail or otherwise, unless the person has been registered with the department pursuant to the provisions of this section.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8).

(3) Except as otherwise provided in s. 517.061(12)(a)4. ~~and s. 517.061(20)(a)3.~~, the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(13), (15), ~~and (16)7.~~ ~~and (20).~~

(4) No investment adviser or associated person of an investment adviser shall engage in business from offices in this state, or ~~render investment advice to persons thereof, by mail or otherwise,~~ unless the investment adviser and associated persons have been registered with the department pursuant to this section. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to the department.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the department pursuant to the provisions of this section.

~~(6)(5)~~ A dealer, associated person, or investment adviser, or branch office, in order to obtain initial registration, shall file with the department a written application, in a form which the department may by rule prescribe, verified under oath. Dealers and investment advisers shall also file an irrevocable written consent to service of civil process similar to that provided in s. 517.101. The application shall contain such information as the department may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization and, if the applicant is a corporation, a copy of its articles of incorporation and amendments thereto or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all salesmen of the applicant to be employed in this state and the offices to which they will be assigned.

~~(7)(6)~~ The application shall also contain such information as the department may require about the applicant, any partner, officer, or director of the applicant, any person having a similar status or performing similar functions, any person directly or indirectly controlling the applicant, or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant shall file a complete set of fingerprints taken by an authorized law enforcement officer. Such fingerprints shall be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The department may waive, by rule, the requirement that applicants must file a set of fingerprints or the requirement that such fingerprints must be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The department may require information about any such applicant or person concerning such matters as:

(a) His full name, age, photograph, qualifications, educational and business history, and any other names by which he may have been known.

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

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

(d) The names and addresses of other persons of whom the department may inquire as to his character, reputation, and financial responsibility.

~~(8)(7)~~ The department may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any agent-applicant to successfully pass oral or written examinations. The examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory salesman. The department may waive the examination process when it determines that such examinations are not in the public interest. The department shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(8)(7) of the Securities Exchange Act of 1934.

~~(9)(8)~~ The department may by rule require the maintenance of a minimum net capital for registered dealers and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public.

~~(10)(9)~~ An applicant for registration shall pay an assessment fee of \$100, in the case of a dealer or investment adviser, or \$20, in the case of an associated person. There shall be no fee for

reaffiliation of a registered associated person. Each dealer and each investment adviser shall pay an assessment fee of \$50 for each office in this state, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Security Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11)(10) If the department finds that the applicant is of good repute and character and has complied with the provisions of this section and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, associated person, and branch office shall expire on December 31 of the year in which it became effective, except that the department may by rule provide for an equitable method of staggering the expiration dates of registrations using a date other than December 31 of each year. Registration may be renewed by furnishing such information as the department may require, together with payment of the fee required in subsection (10)(9) for dealers, investment advisers, associated persons, or branch offices.

(12)(11)(a) The department may issue a license to a dealer, ~~salesman, officer, office,~~ or investment adviser, associated person, or branch office to evidence registration under this chapter. The department may require the return to the department of any license it may issue prior to issuing a new license.

(b) Every dealer or investment adviser shall promptly file with the department, as prescribed by rules adopted by the department, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to and register with the department a manager for each office the ~~dealer or investment adviser has in this state, and each manager shall be registered as a principal.~~

(13)(12) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the department may specify.

(14)(13) A dealer, associated person, or investment adviser, or branch office registered under this section shall maintain such books and records as the department may prescribe by rule. The department shall have authority to visit and examine the affairs and records of each registered dealer, associated person, or investment adviser, or branch office or require such records and reports submitted to it as it may require by rule.

(15) Every dealer, investment adviser, or branch office registered or required to be registered with the department shall keep a record of all currency transactions in excess of \$10,000 and shall file reports as prescribed under Financial Recordkeeping Reg. 31 C.F.R. Part 103, with the department when transactions occur in or from this state. Any law enforcement agency or the Florida Department of Revenue shall have access to and shall be authorized to

inspect and copy any reports filed with the department pursuant to this subsection. Except as provided in this subsection, all reports filed with the the department are confidential.

(16)(14) In lieu of filing with the department the applications specified in subsection (6)(5), the fees required by subsection (10)(9), and the termination notices required by subsection (12)(11), the department may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository of the National Association of Securities Dealers, Inc., as developed under contract with the North American Securities Administrators Association, Inc.; provided, however, that such procedures shall provide the department with the information and data as required by this section.

Section 5. Section 517.131, Florida Statutes, is amended to read:

517.131 Securities Security Guaranty Fund.--

(1) Effective November 1, 1978, the Treasurer shall establish a Securities Security Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10)(9) and (11)(10) shall be allocated to the fund. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited in the Securities Security Guaranty Fund. If the fund at any time exceeds \$250,000, allocation collection of assessment special fees to for this fund shall be discontinued at the end of that license year, and such assessment special fees shall not be reimposed unless the fund is reduced below \$150,000 by disbursement made in accordance with s. 517.141.

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

(a) A violation of s. 517.07.

(b) A violation of s. 517.301.

(3) Any person shall be eligible to seek recovery from the Securities Security Guaranty Fund if:

(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections in subsection (2);

(b) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(c) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no



property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment;

(d) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court; and

(e) The act for which recovery is sought occurred on or after January 1, 1979.

(4) Any person who files an action that may result in the disbursement of funds from the Securities Security Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the department as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Security Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.

Section 6. Section 517.141, Florida Statutes, is amended to read:

517.141 Payment from the fund.--

(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to the department for payment to be made to such person from the Securities Security Guaranty Fund in the amount equal to the unsatisfied portion of such person's judgment or \$10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages.

(2)(3) Payments for claims shall be limited in the aggregate to \$100,000, regardless of the number of claimants involved, against any one dealer, salesman, or investment adviser or associated person. If the total claims exceed the aggregate limit of \$100,000, the department shall prorate the payment based upon the ratio that the person's claim bears to the total claims filed.

(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the department to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the department receives notice pursuant to s. 517.131(4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the department as provided herein. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section:

(a) The department shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata share of the fund as provided in this section.

(b) Those persons who meet all of the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section shall be entitled to receive their pro rata share of the total disbursement.

(c) Those persons who have filed notice with the department of a pending claim pursuant to s. 517.131(4) but who are not yet eligible for payment from the fund shall be entitled to receive their pro rata share of the total disbursement once they have complied with subsection (1). However, in the event that the amount they are eligible to receive pursuant to subsection (1) is less than their pro rata share as determined herein, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata share of the total disbursement was less than the amount of their claim.

(4) Individual claims filed by persons owning the same joint account, or claims stemming from any other type of accounts maintained by a particular licensee on which more than one name appears, shall be treated as one eligible claimant with respect to payment from the fund.

(5)(4) If at any time the money in the Securities Security Guaranty Fund is insufficient to satisfy any valid claim or portion thereof, the department shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the department.

(6)(2) Upon receipt by the claimant of the payment from the Securities Security Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the department.

(7)(5) All payments and disbursements made from the Securities Security Guaranty Fund shall be made by the Treasurer upon a voucher signed by the Comptroller, as head of the department, or such agent as he may designate.

Section 7. Section 517.151, Florida Statutes, is amended to read:

517.151 Investments of the fund.--The funds of the Securities Security Guaranty Fund shall be invested by the Treasurer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Securities Security Guaranty Fund.

Section 8. Subsection (2) of section 517.161, Florida Statutes, is amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, or salesman.--

(2) The payment of any amount from the Securities Security Guaranty Fund in settlement of a claim or in satisfaction of a judgment against a licensee shall constitute prima facie grounds for the revocation of the license of such licensee.

Section 9. Paragraph (a) of subsection (3) and subsection (4) of section 517.211, Florida Statutes, are amended to read:

517.211 Remedies available in cases of unlawful sale.--

(3) In an action for rescission:



(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

(4) In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

Section 10. Subsection (2) of section 517.241, Florida Statutes, is amended to read:

517.241 Remedies.--

(2) Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of securities or investments, or the right of the state to punish any person for any violation of any law.

Section 11. Section 517.251, Florida Statutes, is created to read:

517.251 Securities, investments, boiler rooms; prohibited practices; remedies.--

(1) It is unlawful and a violation of this chapter for any person:

(a) To offer or sell in or from this state any security or investment when such offer or sale is in violation of s. 517.301 or s. 517.311; or

(b) To directly or indirectly manage, supervise, control, or own, either alone or in association with others, any boiler room in this state which sells or offers for sale any security or investment in violation of paragraph (a).

(2) Any purchaser of a security or investment sold in violation of subsection (1) shall be entitled to rescind such purchase at any time and recover damages as provided in s. 517.211(3)(a), (4), and (6).

Section 12. Section 517.275, Florida Statutes, is created to read:

517.275 Commodities; prohibited practices.--It is unlawful and a violation of this chapter for any person to engage in or from this state in any act or practice constituting a violation of any provision of the Commodity Exchange Act (7 U.S.C. ss. 1 et seq.) or the rules and regulations of the Commodity Futures Trading Commission thereunder upon the effective date of this act.

Section 13. Subsection (1) of section 517.301, Florida Statutes, is amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.--It is unlawful and a violation of the provisions of this chapter for any person:

(1) In connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in any transaction exempted under the provisions of s. 517.061, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Section 14. Subsections (3) and (4) of section 517.311, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to said section to read:

517.311 False representations; deceptive words; enforcement.--

(3) It is unlawful and a violation of this chapter for any person in connection with the offer or sale of any investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or any agency or officer thereof or by the United States or any agency or officer thereof; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or any agency or officer thereof or by the United States or any agency or officer thereof.

Section 15. Each section which is added to chapter 517, Florida Statutes, by this act is repealed on October 1, 1990, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 16. This act shall take effect upon becoming a law.

Approved by the Governor June 11, 1984.

Filed in Office Secretary of State June 12, 1984.

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CHAPTER 84-160

Committee Substitute for House Bill No 836

An act relating to contracting; amending s. 489.103, F.S.; exempting the installation and maintenance of certain water conditioning units from provisions regulating contracting; prohibiting political subdivisions from

# Florida Legislature

## History of Legislation 1984 Regular Session

RE: CHAPTER 84-159

CS/HB 797 (Passed)

CS/SB 766 (Substituted)

HB 861 (Compare)

CS/SB 887 (Compare)



prepared by:

## Joint Legislative Management Committee

Legislative Information Division  
Capitol Building, Room 826 — 488-4371

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03/02/84 HOUSE Referred to Finance & Taxation, Appropriations  
 03/09/84 HOUSE On Committee agenda-- For subreferral, 21 HOB, 1:30 pm, 03/14/84  
 04/03/84 HOUSE Introduced, referred to Finance & Taxation, Appropriations -HJ 00078  
 04/06/84 HOUSE On Committee agenda-- Subcomm., F. & T., 16 HOB, 3:30 pm, 04/10/84  
 05/04/84 HOUSE On Committee agenda-- F. & T., 21 HOB, 3 30pm, 05/08/84  
 05/16/84 HOUSE Comm Report CS by Finance & Taxation -HJ 00443. Now in Appropriations  
 05/21/84 HOUSE On Committee agenda-- Appropriations, 21 HOB, 8:00 am, 05/22/84  
 05/23/84 HOUSE Comm Report Favorable, placed on Calendar by Appropriations -HJ 00605  
 05/31/84 HOUSE Placed on Special Order Calendar  
 06/01/84 HOUSE CS read first and second times; Read third time -HJ 01093; Pending roll call, Died on Calendar

H 0795 GENERAL BILL/CS by Commerce, Meffert (Similar CS/S 0409, Compare H 0915, S 0370)  
Regional Reciprocal Banking Act: creates said act; authorizes bank holding companies whose operations are principally conducted in certain states to acquire banks/bank holding companies located in state; provides conditions & limitations; requires divestiture, etc. Creates 658 295, amends 658 73. Effective Date: Contingent.  
 03/01/84 HOUSE Prefiled  
 03/02/84 HOUSE Referred to Commerce  
 03/06/84 HOUSE Subreferred to Subcommittee on Banking and Commerce  
 04/03/84 HOUSE Introduced, referred to Commerce -HJ 00078, Subreferred to Subcommittee on Banking and Commerce  
 04/05/84 HOUSE On Committee agenda-- For subref. ratification, 21 HOB, 3:30pm, 04/09  
 04/12/84 HOUSE Comm Report CS placed on Calendar by Commerce -HJ 00182  
 04/16/84 HOUSE Placed on Special Order Calendar; CS read first and second times -HJ 00214  
 04/17/84 HOUSE Read third time, CS passed; YEAS 113 NAYS 2 -HJ 00222; Immediately certified  
 04/17/84 SENATE In Messages  
 04/19/84 SENATE Received, referred to Commerce -SJ 00157  
 05/02/84 SENATE Withdrawn from Commerce, Substituted for CS/SB 409; Amendment pending -SJ 00216  
 05/08/84 SENATE Placed on Special Order Calendar  
 05/10/84 SENATE Placed on Special Order Calendar; Amendments adopted, Amendment pending -SJ 00251  
 05/15/84 SENATE Placed on Special Order Calendar. Pending amendment withdrawn; Amendment reconsidered, failed, Passed as amended; YEAS 38 NAYS 1 -SJ 00263; Immediately certified -SJ 00264  
 05/15/84 HOUSE In Messages  
 05/16/84 HOUSE Concurred; CS passed as amended; YEAS 109 NAYS 4 -HJ 00418  
 05/16/84 Ordered engrossed, then enrolled  
 05/21/84 HOUSE Signed by Officers and presented to Governor -HJ 00508  
 05/22/84 Approved by Governor Chapter No 84-42 -HJ 00535

H 0796 GENERAL BILL by Mackenzie  
Health Insurance Claims: requires insurance coverage re certain prescription drugs, provides exception Amends 627 645. Effective Date, 10/01/84  
 03/01/84 HOUSE Prefiled  
 03/02/84 HOUSE Referred to Commerce  
 03/06/84 HOUSE Subreferred to Subcommittee on Health Care and Life and Health Insurance  
 04/03/84 HOUSE Introduced, referred to Commerce -HJ 00078; Subreferred to Subcommittee on Health Care and Life and Health Insurance; On Committee agenda-- Subcomm., Commerce, 16 HOB, 1:15 pm, 04/04/84

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04/05/84 HOUSE On Committee agenda-- For subref ratification, 21 HOB, 3:30pm, 04/09  
 04/09/84 HOUSE On Committee agenda-- Subcomm., Commerce, 16 HOB, 1 15 pm, 04/11/84  
 06/01/84 HOUSE Died in Committee on Commerce

H 0797 GENERAL BILL/CS by Commerce, Silver and others (Compare H 0861, CS/S 0766, CS/S 0887)  
Investor Protection Act, redesignates "Fla. Securities Act" as "Fla. Investor Protection Act"; amends provision re to exempt securities & transactions; clarifies language & includes federally chartered savings banks; renames Security Guaranty Fund; provides notice requirements, etc Amends Ch. 517 Effective Date 06/11/84  
 03/01/84 HOUSE Prefiled  
 03/02/84 HOUSE Referred to Commerce, Appropriations  
 03/06/84 HOUSE Subreferred to Subcommittee on Banking and Commerce  
 04/03/84 HOUSE Introduced, referred to Commerce, Appropriations -HJ 00078; Subreferred to Subcommittee on Banking and Commerce  
 04/05/84 HOUSE On Committee agenda-- For subref ratification, 21 HOB, 2:30pm, 04/09  
 04/09/84 HOUSE On Committee agenda-- Subcomm., Commerce, 21 HOB, 1 15 pm, 04/11/84  
 04/12/84 HOUSE On Committee agenda-- Commerce, 21 HOB, 04/16/84 & 04/24/84  
 05/01/84 HOUSE Comm Report CS by Commerce -HJ 00288; Now in Appropriations  
 05/16/84 HOUSE Withdrawn from Appropriations -HJ 00442, Placed on Calendar  
 05/24/84 HOUSE Placed on Special Order Calendar  
 05/29/84 HOUSE CS read first and second times; Amendments adopted; Read third time, CS passed as amended; YEAS 109 NAYS 0 -HJ 00752  
 05/29/84 SENATE In Messages  
 05/30/84 SENATE Received; Substituted for CS/SB 766; Passed; YEAS 34 NAYS 0 -SJ 00572  
 05/30/84 Ordered enrolled  
 06/01/84 HOUSE Signed by Officers and presented to Governor -HJ 01292  
 06/11/84 Approved by Governor Chapter No 84-159

H 0798 GENERAL BILL/CS by Natural Resources, Thompson  
Saltwater Fisheries, advances repeal date re certain local laws pertaining to saltwater fishing, specifies that certain subdivisions of statutes scheduled for repeal under certain act shall remain in force Repeals various F.S Effective Date: 06/07/84.  
 03/01/84 HOUSE Prefiled  
 03/02/84 HOUSE Referred to Natural Resources  
 03/14/84 HOUSE Subreferred to Subcommittee on Living Resources  
 04/03/84 HOUSE Introduced, referred to Natural Resources -HJ 00078, Subreferred to Subcommittee on Living Resources  
 04/12/84 HOUSE On Committee agenda-- Subcomm., Nat Resources, 24 HOB, 3:30pm, 04/16  
 04/20/84 HOUSE On Committee agenda-- Natural Resources, 413 C, 2:00 pm, 04/24/84  
 04/26/84 HOUSE Comm. Report: CS placed on Calendar by Natural Resources -HJ 00286  
 05/02/84 HOUSE Placed on Special Order Calendar  
 05/09/84 HOUSE CS read first and second times -HJ 00350  
 05/10/84 HOUSE Read third time; Amendments adopted; CS passed as amended, YEAS 105 NAYS 0 -HJ 00363  
 05/14/84 SENATE In Messages  
 05/15/84 SENATE Received, referred to Natural Resources and Conservation -SJ 00262  
 05/18/84 SENATE On Committee agenda-- Natural Res. & Cons., 05/22/84, 9:00 am, Rm H  
 05/22/84 SENATE Comm. Report Favorable with amend, placed on Calendar by Natural Resources and Conservation -SJ 00340  
 05/24/84 SENATE Placed on Special Order Calendar, Passed as amended; YEAS 38 NAYS 0 -SJ 00425; Immediately certified

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05/09/84 05/15/84 -SJ 00256  
 05/10/84 SENATE Withdrawn from- Education -SJ 00247  
 05/11/84 SENATE Now in Appropriations -SJ 00253  
 05/23/84 SENATE Extension of time granted Committee Appropriations  
 06/01/84 SENATE Died in Committee on Appropriations

S 0761 GENERAL BILL by Henderson (Compare Eng/H 1039)  
Statutory Report; provides that annual report required to be filed by Fla Pari-mutuel Commission be submitted by Nov. 15 annually, eliminates requirement that budget requests submitted to Legislature be accompanied by volunteer impact statement, etc Amends F.S Effective Date: 10/01/84.  
 04/05/84 SENATE Filed  
 04/12/84 SENATE Introduced, referred to Governmental Operations, Appropriations -SJ 00103  
 04/24/84 SENATE On Committee agenda-- Governmental Operations, Temporarily postponed  
 04/25/84 SENATE Extension of time granted Committee Governmental Operations  
 05/04/84 SENATE Extension of time granted Committee Governmental Operations  
 05/16/84 SENATE Extension of time granted Committee Governmental Operations  
 06/01/84 SENATE Died in Committee. Iden /Sim./Compare Bill passed, refer to HB 1039 (Ch 84-254)

S 0762 GENERAL BILL/CS by Personnel, Retirement and Collective Bargaining, Margolis (Similar H 1027)  
Firefighters, creates trust fund for payment of supplemental compensation for qualifying firefighters; provides for payment to special fire service taxing districts from trust fund; provides authorization to expend funds. Amends 633 382 Effective Date: 07/01/84  
 04/05/84 SENATE Filed  
 04/12/84 SENATE Introduced, referred to Personnel, Retirement and Collective Bargaining, Appropriations -SJ 00103  
 04/25/84 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining  
 05/04/84 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining  
 05/07/84 SENATE On Committee agenda-- Personnel, R & C B, 05/09/84, 9 00 am, Rm. C  
 05/09/84 SENATE Comm. Report: CS by Personnel, Retirement and Collective Bargaining -SJ 00253, CS read first time 05/15/84 -SJ 00256  
 05/11/84 SENATE Now in Appropriations -SJ 00253  
 05/17/84 SENATE Withdrawn from Appropriations -SJ 00326, Placed on Calendar  
 05/30/84 SENATE Placed on Consent Calendar; CS passed, YEAS 31 NAYS 0 -SJ 00544  
 05/30/84 HOUSE In Messages  
 05/31/84 HOUSE Received, placed on Calendar -HJ 00920, Substituted for HB 1027; Read second time, Read third time, Passed, YEAS 111 NAYS 1 -HJ 01044  
 05/31/84 Ordered enrolled -SJ 00625  
 06/08/84 SENATE Signed by Officers and presented to Governor  
 06/18/84 Approved by Governor Chapter No. 84-244

S 0763 GENERAL BILL by Stuart (Compare H 1230, S 0941)  
Technology Resource Planning; alters composition & duties of commission, requires state attorneys & public defenders to prepare information technology resource plans, provides guidelines for & authorizes Information Resource Commission to prescribe plan format, etc Amends 43 16, 282 309 Effective Date 07/01/84.  
 04/05/84 SENATE Filed  
 04/12/84 SENATE Introduced, referred to Judiciary-Civil, Governmental Operations, Appropriations -SJ 00104  
 04/13/84 SENATE Extension of time granted Committee Judiciary-Civil  
 04/16/84 SENATE On Committee agenda-- Judiciary-Civil, 04/18/84, 2 00 pm, Rm B

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04/18/84 SENATE Comm Report: Favorable by Judiciary-Civil -SJ 00149  
 04/19/84 SENATE Now in Governmental Operations -SJ 00149  
 04/30/84 SENATE On Committee agenda-- Governmental Operations, 05/02/84, 3:00 pm, Rm. H  
 05/02/84 SENATE Comm. Report Favorable by Governmental Operations -SJ 00229  
 05/04/84 SENATE Now in Appropriations -SJ 00229  
 05/17/84 SENATE Withdrawn from Appropriations -SJ 00326, Placed on Calendar  
 05/31/84 SENATE Placed on Special Order Calendar  
 06/01/84 SENATE Placed on Special Order Calendar, Passed as amended; YEAS 34 NAYS 0 -SJ 00781  
 06/01/84 HOUSE In Messages; Died in Messages

S 0764 GENERAL BILL by Margolis (Compare H 0883)  
Homestead Exemptions; removes the 5-year residency requirement for certain homestead tax exemptions, removes certain language declared unconstitutional Amends 196.031. Effective Date 06/24/84  
 04/05/84 SENATE Filed  
 04/12/84 SENATE Introduced, referred to Finance, Taxation and Claims -SJ 00104  
 04/17/84 SENATE On Committee agenda-- Finance, Tax & Claims, 04/19/84, 12 noon, Rm 1C  
 04/19/84 SENATE Comm. Report: Favorable, placed on Calendar by Finance, Taxation and Claims -SJ 00149  
 05/01/84 SENATE Placed on Special Order Calendar, Passed; YEAS 37 NAYS 0 -SJ 00199  
 05/02/84 HOUSE In Messages  
 05/03/84 HOUSE Received, referred to Finance & Taxation -HJ 00291  
 05/16/84 HOUSE On Committee agenda-- Finance and Tax, 21 HOB, 8.30 AM, 05/17/84  
 05/18/84 HOUSE Comm Report. Favorable with amend , placed on Calendar by Finance & Taxation -HJ 00486  
 05/31/84 HOUSE Placed on Special Order Calendar, Read second time, Amendment adopted; Read third time; Passed as amended; YEAS 108 NAYS 0 -HJ 00986  
 05/31/84 SENATE In Messages  
 06/01/84 SENATE Concurred, Passed as amended, YEAS 23 NAYS 0  
 06/01/84 Ordered engrossed, then enrolled -SJ 00929  
 06/14/84 SENATE Signed by Officers and presented to Governor  
 06/24/84 Approved by Governor Chapter No 84-327

S 0765 GENERAL BILL by Grizzle (Compare CS/H 0529, Eng/S 0352)  
Transportation Administration, revises certain annual reporting requirements of D.O.T. Amends 334.22. Effective Date Upon becoming law  
 04/05/84 SENATE Filed  
 04/12/84 SENATE Introduced, referred to Transportation, Rules and Calendar -SJ 00104  
 04/23/84 SENATE Extension of time granted Committee Transportation  
 05/04/84 SENATE Extension of time granted Committee Transportation  
 05/16/84 SENATE Extension of time granted Committee Transportation  
 05/23/84 SENATE Extension of time granted Committee Transportation  
 06/01/84 SENATE Died in Committee. Iden /Sim./Compare Bill passed, refer to SB 352 (Ch. 84-309)

S 0766 GENERAL BILL/CS by Commerce, Carlucci (Compare CS/H 0797)  
Investor Protection Act, redesignates "Fla. Securities Act" as "Fla Investor Protection Act"; provides for prohibited practices & remedies re certain securities, investments, or boiler rooms, creates provision re prohibited practices with respect to commodities, etc. Amends Ch. 517 Effective Date: Upon becoming law  
 04/05/84 SENATE Filed  
 04/12/84 SENATE Introduced, referred to Commerce -SJ 00104  
 04/26/84 SENATE Extension of time granted Committee Commerce  
 05/04/84 SENATE On Committee agenda-- Commerce, 05/08/84, 2 00 pm, Rm. A  
 05/08/84 SENATE Comm. Report: CS placed on Calendar by Commerce -SJ 00245  
 05/10/84 SENATE CS read first time -SJ 00246

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- 05/30/84 SENATE Placed on Special Order Calendar. Iden./Sim House Bill substituted. Laid on table under Rule.  
Iden /Sim /Compare Bill passed. refer to CS/HB 797 (Ch. 84-159) -SJ 00572
- S 0767 GENERAL BILL/CS by Transportation, Crawford (Similar CS/H 0970, Compare CS/S 0106, Eng/S 0872)  
Motor & Special Fuel Tax, provides for refunds to be made for tax credits on special fuel or motor fuel tax paid, revises definition of gasohol & extends exemption therefor; provides for review & repeal  
Amends 207 005, 212 63 Effective Date 07/01/84
- 04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Finance, Taxation and Claims -SJ 00104  
04/25/84 SENATE Extension of time granted Committee Finance, Taxation and Claims  
05/01/84 SFNATE Also referred to Transportation -SJ 00194  
05/03/84 SENATE On Committee agenda-- Finance, Tax. & Claims, 05/07/84, 2:00 pm, Rm 1C  
05/04/84 SENATE Extension of time granted Committee Finance, Taxation and Claims  
05/07/84 SENATE Comm Report Favorable with amend. by Finance, Taxation and Claims -SJ 00245  
05/08/84 SENATE Now in Transportation -SJ 00245  
05/16/84 SENATE Extension of time granted Committee Transportation, On Committee agenda-- Transportation, 05/18/84, 9.00 am, Rm C  
05/18/84 SENATE Comm Report CS placed on Calendar by Transportation -SJ 00340  
05/23/84 SENATE CS read first time -SJ 00343  
06/01/84 SENATE Placed on Special Order Calendar -SJ 00779; Iden /Sim House Bill substituted, Laid on table under Rule, Iden /Sim /Compare Bill passed, refer to CS/CS/H970(84-353), S872(84-334), CS/S106(Vetoed) -SJ 00914
- S 0768 GENERAL BILL by Rehm (Similar H 0709)  
Erosion Control: (Pinellas Co ) provides appropriations to fund erosion control project under D N R Appropriation \$470,475 Effective Date 07/01/84.  
04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Natural Resources and Conservation, Appropriations -SJ 00104  
04/25/84 SFNATE Extension of time granted Committee Natural Resources and Conservation  
05/04/84 SENATE Extension of time granted Committee Natural Resources and Conservation  
05/16/84 SENATE Extension of time granted Committee Natural Resources and Conservation  
05/28/84 SENATE Extension of time granted Committee Natural Resources and Conservation  
06/01/84 SENATE Died in Committee on Natural Resources and Conservation
- S 0769 MEMORIAL by Rehm  
Vaccine-Injured Children: urges U S Congress to enact legislation to provide federal compensation for vaccine-injured children.  
04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Rules and Calendar -SJ 00104  
04/25/84 SENATE Extension of time granted Committee Rules and Calendar  
05/04/84 SENATE Extension of time granted Committee Rules and Calendar  
05/16/84 SENATE Extension of time granted Committee Rules and Calendar  
05/25/84 SENATE Extension of time granted Committee Rules and Calendar  
06/01/84 SENATE Died in Committee on Rules and Calendar
- S 0770 GENERAL BILL by Fox (Compare Eng/H 0698)  
Alcoholic Beverages: amends provision re alcoholic content of intoxicating liquors in counties where such beverages are prohibited  
Amends 568 01 Effective Date Upon becoming law  
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- 04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Commerce -SJ 00104  
04/19/84 SENATE On Committee agenda-- Commerce, 04/24/84, 2 00 pm, Rm A  
04/24/84 SENATE Comm Report Favorable with amend., placed on Calendar by Commerce -SJ 00180  
05/30/84 SENATE Placed on Special Order Calendar; Iden /Sim House Bill substituted; Laid on table under Rule, Iden /Sim /Compare Bill passed, refer to HB 698 (Ch. 64-299) -SJ 00592
- S 0771 GENERAL BILL by Gordon (Compare CS/H 0914)  
Education Finance: provides for calculation of additional full-time equivalent membership for students receiving certain grades for honors courses. Amends 238.081. Effective Date: 07/01/84.  
04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Education, Appropriations -SJ 00104  
04/25/84 SENATE Extension of time granted Committee Education  
05/04/84 SENATE Extension of time granted Committee Education  
05/16/84 SENATE Extension of time granted Committee Education  
05/25/84 SENATE Extension of time granted Committee Education  
06/01/84 SENATE Died in Committee on Education
- S 0772 GENERAL BILL by Thurman  
Classification Plan of Roads: provides that certain roads be brought to physical condition commensurate with current construction standards; provides certain roads previously transferred to counties & municipalities be reclassified as state roads Amends 335 04.  
Effective Date Upon becoming law.  
04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Transportation, Appropriations -SJ 00104  
04/23/84 SENATE Extension of time granted Committee Transportation  
05/04/84 SENATE Extension of time granted Committee Transportation  
05/16/84 SENATE Extension of time granted Committee Transportation  
05/23/84 SENATE Extension of time granted Committee Transportation  
06/01/84 SENATE Died in Committee on Transportation
- S 0773 GENERAL BILL by Grant (Identical H 1238)  
Public School Financing: provides specific cost factor for handicapped adult students within special adult general education program category included in computation of basic amount of funds needed for current operation of district schools Amends 238.081 Effective Date: 07/01/84  
04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Education, Appropriations -SJ 00104  
04/25/84 SENATE Extension of time granted Committee Education  
05/01/84 SENATE On Committee agenda-- Education, 05/03/84, 9 00 am, Rm A  
05/03/84 SENATE Comm. Report: Favorable by Education -SJ 00229  
05/04/84 SENATE Now in Appropriations -SJ 00229  
05/17/84 SENATE Extension of time granted Committee Appropriations  
05/30/84 SENATE Extension of time granted Committee Appropriations  
06/01/84 SENATE Died in Committee on Appropriations
- S 0774 GENERAL BILL by Plummer (Similar CS/H 0236)  
Drivers' Licenses: specifies that eyesight examinations may be given by department examiner, ophthalmologist or optometrist. Amends 322 12, 121 Effective Date 10/01/84.  
04/05/84 SENATE Filed  
04/12/84 SENATE Introduced, referred to Transportation -SJ 00104  
04/23/84 SENATE Extension of time granted Committee Transportation  
04/25/84 SENATE On Committee agenda-- Transportation, 04/25/84, Temporarily postponed  
05/04/84 SENATE Extension of time granted Committee Transportation  
05/09/84 SENATE On Committee agenda-- Transportation, 05/11/84, 2 00 pm, Rm. C  
05/11/84 SENATE Comm Report: Favorable with amend. placed on Calendar  
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03/08/84 HOUSE Referred to Health & Rehabilitative Services, Appropriations

03/14/84 HOUSE Subreferred to Subcommittee on Health, Economic and Social Services

04/03/84 HOUSE Introduced, referred to Health & Rehabilitative Services, Appropriations -HJ 00085, Subreferred to Subcommittee on Health, Economic and Social Services; On Committee agenda-- Subcomm., H R S., 16 HOB, 3:30 pm, 04/04/84

04/05/84 HOUSE On Committee agenda-- For subreferral ratification, 317C, 1 15pm, 04/09; On Committee agenda-- H R S., 317 C, 1 15 pm, 04/09/84

04/10/84 HOUSE Comm. Report: Favorable by Health & Rehabilitative Services -HJ 00166; Now in Appropriations

04/16/84 HOUSE Withdrawn from Appropriations -HJ 00212; Placed on Calendar

04/26/84 HOUSE Placed on Special Order Calendar

05/07/84 HOUSE Read second time -HJ 00318

05/08/84 HOUSE Read third time, Passed, YEAS 104 NAYS 0 -HJ 00325

05/09/84 SENATE In Messages

05/15/84 SENATE Received, referred to Health and Rehabilitative Services -SJ 00262

05/25/84 SENATE Extension of time granted Committee Health and Rehabilitative Services

06/01/84 SENATE Died in Committee on Health and Rehabilitative Services

H 0858 GENERAL BILL by Lawson (Identical S 0433)  
Educational Research, directs Board of Regents to establish Basic Science & Clinical Research Facility at F.A.M.U. Creates 240,520. Appropriation, \$6,285,500. Effective Date. Upon becoming law.

03/01/84 HOUSE Prefiled

03/08/84 HOUSE Referred to Higher Education, Appropriations

04/03/84 HOUSE Introduced, referred to Higher Education, Appropriations -HJ 00085

04/09/84 HOUSE On Committee agenda-- Higher Education, 214 C, 1:15 pm, 04/11/84

04/23/84 HOUSE Withdrawn from Higher Education, Appropriations; Withdrawn from further consideration -HJ 00243

H 0859 GENERAL BILL/CS by Transportation, Reddick (Similar Eng/S 0847)  
Minority Contractors; authorizes head of D O T. to utilize 10% of minority set-aside funds for construction management development program, provides for qualification of participants in program, authorizes expenditure of funds for bond/loan guarantee program; etc Amends 339.081 Effective Date 07/01/84

03/01/84 HOUSE Prefiled

03/08/84 HOUSE Referred to Transportation, Appropriations

04/03/84 HOUSE Introduced, referred to Transportation, Appropriations -HJ 00085

04/09/84 HOUSE On Committee agenda-- For subreferral, 21 HOB, 3:30 pm, 04/11/84

04/11/84 HOUSE Subreferred to Subcommittee on Roads and Highways/Capacity

04/27/84 HOUSE On Committee agenda-- Transportation, 21 HOB, 8:00 am, 05/01/84

05/07/84 HOUSE Comm. Report: CS by Transportation -HJ 00322; Now in Appropriations

06/01/84 HOUSE Died in Committee, Iden /Sim./Compare Bill passed, refer to SB #47 (Ch 84-370)

H 0860 GENERAL BILL/CS by Health & Rehabilitative Services, Abrams and others (Similar CS/S 0636)  
Nursing Homes/Medicaid, provides Medicaid recipients limited right of admission to nursing homes, changes & imposes certain conditions re Medicaid recipients upon licensure of nursing homes; provides exceptions Amends 400 022, 071, 111 Effective Date 10/01/84

03/01/84 HOUSE Prefiled

03/08/84 HOUSE Referred to Health & Rehabilitative Services,

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03/08/84 Appropriations

03/14/84 HOUSE Subreferred to Subcommittee on Health Care Cost Containment

04/03/84 HOUSE Introduced, referred to Health & Rehabilitative Services, Appropriations -HJ 00086; Subreferred to Subcommittee on Health Care Cost Containment

04/05/84 HOUSE On Committee agenda-- For subreferral ratification, 317C, 1 15pm, 04/09

04/12/84 HOUSE On Committee agenda-- Subcomm., H.R.S., 212 HOB, 1:15pm, 04/16/84

04/27/84 HOUSE On Committee agenda-- H R S., 317 C, 8:00 am, 05/01/84

05/03/84 HOUSE Comm. Report: CS by Health & Rehabilitative Services -HJ 00299; Now in Appropriations

05/24/84 HOUSE On Committee agenda-- Approp., 21 HOB, 8.15am & after session, 05/25/84

06/01/84 HOUSE Died in Committee on Appropriations

H 0861 GENERAL BILL by Kutun (Similar CS/S 0887, Compare CS/H 0797)  
Securities Act; defines "branch office" & includes nonbank subsidiaries of bank in "dealer" definition; amends provision re exempt securities, clarifies language & includes federally chartered savings banks, revises provisions re registrations filed under 1933 Securities Act, etc. Amends Ch. 517 Effective Date: 10/01/84.

03/01/84 HOUSE Prefiled

03/08/84 HOUSE Referred to Commerce, Finance & Taxation, Appropriations

03/12/84 HOUSE Subreferred to Subcommittee on Banking and Commerce

04/03/84 HOUSE Introduced, referred to Commerce, Finance & Taxation, Appropriations -HJ 00086; Subreferred to Subcommittee on Banking and Commerce

04/11/84 HOUSE Comm. Report Favorable with amend. by Commerce -HJ 00181; Now in Finance & Taxation

04/17/84 HOUSE On Committee agenda-- For subreferral, 21 HOB, 8:30am, 04/19/84

04/19/84 HOUSE Withdrawn from Finance & Taxation -HJ 00232; Now in Appropriations

05/02/84 HOUSE Subreferred to Subcommittee on General Government (Sub II)

05/24/84 HOUSE On Committee agenda-- Approp., 21 HOB, 8.15am & after session, 05/25/84

06/01/84 HOUSE Died in Committee, Iden /Sim./Compare Bill passed, refer to CS/HB 797 (Ch 84-159)

H 0862 CONCURRENT RESOLUTION by Simone, Shackelford (Similar H 1203)  
Manatee High School Football Team; recognizes Manatee High School "Hurricanes" football team, & Coach Joe Kinnan & his staff for their accomplishments in winning the 1983-1984 Class AAAA State Football Championship.

03/01/84 HOUSE Prefiled

03/08/84 HOUSE Referred to Rules & Calendar

04/03/84 HOUSE Introduced, referred to Rules & Calendar -HJ 00086

06/01/84 HOUSE Died in Committee, Iden /Sim /Compare Bill passed, refer to HR 1203 (Adopted)

H 0863 GENERAL BILL/CS by Regulatory Reform, Metcalf and others (Similar S 0491)  
Professional Regulation, provides for regulation of alarm systems installation or repair business; creates advisory council to D P R., provides qualifications & procedures for licensure & qualifications for issuance of competency certificate; provides for license renewal, provides for bond, etc. Effective Date: 10/01/84.

03/01/84 HOUSE Prefiled

03/08/84 HOUSE Referred to Regulatory Reform, Finance & Taxation, Appropriations

03/15/84 HOUSE Subreferred to Subcommittee on Department of Professional Regulation

04/03/84 HOUSE Introduced, referred to Regulatory Reform, Finance & Taxation, Appropriations -HJ 00086, Subreferred to Subcommittee on Department of Professional Regulation;

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05/24/84 SENATE Signed by Officers and filed with Secretary of State  
-SJ 00432

S 0887 GENERAL BILL/CS by Commerce, Crawford (Similar H 0861, Compare  
CS/H 0797)

Securities Act: defines "branch office" & includes nonbank subsidiaries  
of bank in "dealer" definition; amends provision re exempt securities;  
clarifies language & includes federally chartered savings banks, adds  
technical & clarifying language; renames Security Guaranty Fund, etc.  
Amends Ch. 517 Effective Date: 10/01/84.

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Commerce, Finance, Taxation and  
Claims, Appropriations -SJ 00114

04/26/84 SENATE Extension of time granted Committee Commerce

04/27/84 SENATE On Committee agenda-- Commerce, 05/01/84, 2:00 pm, Rm.  
A

05/01/84 SENATE Comm. Report. CS by Commerce -SJ 00229; CS read first  
time 05/04/84 -SJ 00232

05/04/84 SENATE Now in Finance, Taxation and Claims -SJ 00230

05/16/84 SENATE Extension of time granted Committee Finance, Taxation  
and Claims

05/25/84 SENATE Extension of time granted Committee Finance, Taxation  
and Claims

06/01/84 SENATE Died in Committee, Iden./Sim./Compare Bill passed,  
refer to CS/HB 797 (Ch. 84-159)

S 0888 GENERAL BILL by Hill (Similar Eng/H 0761)

Barbering, requires Prof. Reg Dept. to inspect barber schools; provides  
fee, provides for suspensions & fines, authorizes cosmetologists to  
teach at barber schools; prohibits certain ownership or operation of  
barbershops, etc. Creates 246.222..224, amends 476.194..214, repeals  
476 204 Effective Date: 10/01/84.

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Economic, Community and  
Consumer Affairs, Appropriations -SJ 00114

04/26/84 SENATE Extension of time granted Committee Economic, Community  
and Consumer Affairs

05/09/84 SENATE Extension of time granted Committee Economic, Community  
and Consumer Affairs

05/21/84 SENATE Extension of time granted Committee Economic, Community  
and Consumer Affairs

06/01/84 SENATE Died in Committee on Economic, Community and Consumer  
Affairs

S 0889 GENERAL BILL by Vogt (Identical H 0690)

Alcoholic Beverages: requires each manufacturer of beer to grant beer  
distributors a restricted, exclusive sales territory specified in  
agreement filed with Alcoholic Beverages & Tobacco Div of Business  
Regulation Dept Creates 561.67. Effective Date Upon becoming law.

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Commerce -SJ 00114

04/26/84 SENATE Extension of time granted Committee Commerce

05/09/84 SENATE Extension of time granted Committee Commerce

05/21/84 SENATE Extension of time granted Committee Commerce

06/01/84 SENATE Died in Committee on Commerce

S 0890 GENERAL BILL/CS by Judiciary-Criminal, Crawford (Compare Eng/S 0138,  
S 0891)

Sexual Battery/Child Abuse: requires chief judge of each judicial  
circuit to provide by rule for limits on number of interviews certain  
victims must submit to for law enforcement or discovery purposes;  
provides rules of evidence for certain child abuse prosecutions, etc.  
Creates 827 11 Effective Date. Upon becoming law

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Judiciary-Criminal,  
Judiciary-Civil -SJ 00114

04/19/84 SENATE On Committee agenda-- Judiciary-Criminal, 04/24/84,  
2:00 pm, Rm. C

04/24/84 SENATE CS combines this bill and 891; Comm Report. CS by

CONTINUED ON NEXT PAGE

04/24/84 Judiciary-Criminal -SJ 00180; CS read first time  
04/27/84 -SJ 00187

04/25/84 SENATE Now in Judiciary-Civil -SJ 00180

04/27/84 SENATE Extension of time granted Committee Judiciary-Civil

05/02/84 SENATE On Committee agenda-- Judiciary-Civil, 05/03/84, 9:00  
am, Rm. B

05/03/84 SENATE Comm Report: Favorable, placed on Calendar by  
Judiciary-Civil -SJ 00229

06/01/84 SENATE Died on Calendar, Iden./Sim./Compare Bill passed, refer  
to SB 138 (Ch 84-86)

S 0891 GENERAL BILL by Crawford (Compare S 0890)

Child Abuse: provides rules of evidence for child abuse prosecutions in  
which sexual conduct is alleged Creates 827 11 Effective Date  
Upon becoming law.

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Judiciary-Criminal,  
Judiciary-Civil -SJ 00114

04/19/84 SENATE On Committee agenda-- Judiciary-Criminal, 04/24/84,  
2:00 pm, Rm. C

04/24/84 SENATE CS combines this bill and 890; Comm Report: CS by  
Judiciary-Criminal -SJ 00180; CS read first time  
04/27/84 -SJ 00187

04/25/84 SENATE Now in Judiciary-Civil -SJ 00180

04/27/84 SENATE Extension of time granted Committee Judiciary-Civil

05/02/84 SENATE On Committee agenda-- Judiciary-Civil, 05/03/84, 9:00  
am, Rm. B

05/03/84 SENATE Comm Report: Favorable, placed on Calendar by  
Judiciary-Civil -SJ 00229

06/01/84 SENATE Died on Calendar

S 0892 GENERAL BILL by Jenne (Compare H 1240, Eng/S 0500)

Presidential Preference Primary, changes minimum percentage of votes  
that a candidate shall receive in order to qualify to have any national  
convention delegates allocated to him, deletes provision allowing direct  
election of such delegates Amends 103.101 Effective Date: 10/01/84

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Judiciary-Civil -SJ 00115

04/13/84 SENATE Extension of time granted Committee Judiciary-Civil

04/27/84 SENATE Extension of time granted Committee Judiciary-Civil

05/08/84 SENATE Withdrawn from Judiciary-Civil; Indefinitely postponed,  
Iden./Sim./Compare Bill passed, refer to SB 500 (Ch.  
84-92) -SJ 00238

S 0893 GENERAL BILL by Castor (Identical CS/H 1199)

Labor: provides that certain provisions re discrimination do not apply  
to employers or their employees or labor organizations or their members  
subject to Federal Fair Labor Standards Act of 1938 Amends 448 07

Effective Date 06/24/84

04/11/84 SENATE Filed

04/12/84 SENATE Introduced, referred to Commerce -SJ 00115

04/26/84 SENATE Extension of time granted Committee Commerce

04/27/84 SENATE On Committee agenda-- Commerce, 05/01/84, 2 00 pm, Rm.  
A

05/01/84 SENATE Comm Report: Favorable with amend, placed on Calendar  
by Commerce -SJ 00229

05/17/84 SENATE Placed on Special Order Calendar: Passed as amended;  
YEAS 35 NAYS 0 -SJ 00322

In Messages

05/25/84 HOUSE Received, placed on Calendar -HJ 00665

05/29/84 HOUSE Placed on Special Order Calendar

05/30/84 HOUSE Substituted for CS/HB 1199; Read second time; Amendment  
pending -HJ 00899

05/31/84 HOUSE Pending amendment adopted; Amendments adopted;

Amendment pending -HJ 00940

06/01/84 HOUSE Pending amendment withdrawn; Amendments reconsidered,  
withdrawn, Read third time, Passed, YEAS 101 NAYS 9  
-HJ 01099

06/01/84 Ordered enrolled -SJ 00975

CONTINUED ON NEXT PAGE



E C (CHRIS) ANDERSON  
 DIRECTOR  
 DIVISION OF SECURITIES

OFFICE OF COMPTROLLER  
 DEPARTMENT OF BANKING & FINANCE  
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A bill to be entitled  
 An act relating to the regulation of boiler room operations, prohibiting the boiler room method of soliciting investments from the public by telephone, providing for the adoption of rules by the Department of Banking and Finance, prohibiting certain false representations; providing for issuance of cease and desist orders, providing for administrative fines; providing for injunctive relief, providing for restitution, providing for investigations, providing for burden of proof, providing a penalty, providing an effective date.

Be It Enacted by the Legislature of the State of Florida,

Section 1. Short title.--This chapter may be cited as the "Florida Investor Protection Act."

✓ Section 2. Legislative intent.

(1) It is recognized by the Legislature that the investing public nationwide has lost millions of dollars to fraudulent "boiler room" operations soliciting investments from the public by telephone. As a result of the diversion of investment funds to boiler rooms, whose operators generally are not registered with state and federal regulators, are not members of and supervised by self-regulatory organizations, and are frequently undercapitalized, the legitimate securities and commodities industry in this state



1 has been harmed, impeding accumulation of risk capital for  
2 economic expansion. It is, therefore, the intention of the  
3 Legislature that the boiler room method of operation be il-  
4 legal

5 (2) With enactment of the Futures Trading Act of  
6 1982 by the Congress of the United States, the states' role  
7 to ensure orderly trading of commodities and related invest-  
8 ments has been greatly expanded. It is declared the intent  
9 of the Legislature that powers conferred upon the states in  
10 the Commodities Exchange Act are adopted by this chapter to  
11 the fullest extent provided by law for the protection of  
12 investors transacting business in this state.

517.021

13 Section 3. Definitions.--When used in this chapter  
14 the following terms shall have the following respective  
15 meanings

16 (5) ~~4~~ "Boiler room" means an enterprise in which two  
17 or more persons engage in telephone communications with  
18 members of the public using two or more telephones at one  
19 location, or at more than one location in a common scheme  
20 or enterprise, when such telephone communications operate  
21 or would operate as a fraud or deceit upon any client or  
22 participant or prospective client or participant, ~~unless~~

23 (a) Such persons are registered with the department  
24 as a dealer, associated person, or investment adviser pursu-  
25 ant to chapter 517, or

26 (b) Such persons are members or are employed by a  
27 member or are employed by an affiliate of a member or are  
28 employed by a member firm or by an affiliate of a member  
29  
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1 firm of any commodities exchange designated as a contract  
2 market by the Commodity Futures Trading Commission or by  
3 the National Futures Association, Inc., or

4 (c) Such persons are or are employed by a chari-  
5 table organization as defined in chapter 496, a financial  
6 institution as defined in chapter 655, or an insurer as  
7 defined in chapter 624.

8 (7) ~~(2)~~ "Commodity" includes all goods and articles and  
9 all contracts for either present or future delivery there-  
10 of, all commodity options, all commodity pool participa-  
11 tions, all commodity-related investments, and all services,  
12 rights, and interests in which contracts for future de-  
13 livery are dealt and all such contracts.

14 (13) "Department" means the Department of Banking  
15 and Finance.

16 (11) ~~(4)~~ "Investment" includes all commitments of money  
17 or property in expectation of economic benefit. As used in  
18 this chapter, the term "investment" shall not include a  
19 "business opportunity" as defined in the Sale of Business  
20 Opportunities Act, ss 559.80-559.815

✓ 21 (14) (5) "Offer" means any attempt or offer to dispose  
22 of, or solicitation of an offer to buy, any item for value.

✓ 23 (17) (6) "Sale" or "sell" means any contract of sale or  
24 disposition of any item for value

25 (19) (7) "Security" shall have the meaning ascribed to  
26 it in chapter 517. As used in this chapter the term  
27 "security" shall include securities exempt from registra-  
28 tion under the provisions of s. 517.051 or s. 517.061.

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NB

1 (21) (8) "Telephone communication" includes all tele-  
2 phone conversations regardless of point of origination or  
3 mode of transmission.

4 Section 4. Power of department to make rules.--The  
5 department shall administer and provide for the enforcement  
6 of all the provisions of this chapter. The department  
7 shall make, adopt, promulgate, amend, and repeal all rules  
8 necessary or convenient for the carrying out of the duties,  
9 obligations, and powers conferred on said department and  
10 perform any other acts necessary or convenient for the  
11 proper administration, enforcement, or interpretation of  
12 this chapter. The department shall also have the power to  
13 define by rule any term, whether or not used in this chap-  
14 ter, insofar as the definition is not inconsistent with the  
15 provisions of this chapter

16 Section 5 Prohibited Practices.--It is unlawful  
17 and a violation of this chapter for.

18 (1) Any person to offer or sell in or from this  
19 state any security, any commodity, or any plan or program  
20 of investment by telephone communications from a boiler  
21 room.

22 (2) Any person to offer or sell any security, any  
23 commodity, or any plan or program of investment by opera-  
24 tion of a boiler room in this state.

25 (3) Any person to engage in or from this state in  
26 any act or practice constituting a violation of any provi-  
27 sion of the Commodity Exchange Act or the rules and regula-  
28 tions of the Commodity Futures Trading Commission thereun-  
29 der.

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517 301

1 Section 6. False representations.--It is unlawful  
2 and a violation of this chapter for any person in connec-  
3 tion with the offer or sale of commodities or any plan or  
4 program of investment to obtain money or property by means  
5 of

6 (1) A misrepresentation that the commodities or  
7 plan or program of investment offered or sold are guaran-  
8 teed, sponsored, recommended, or approved by the state or  
9 any agency or officer thereof or by the United States or  
10 any agency or officer thereof.

11 (2) A misrepresentation that such person is spon-  
12 sored, recommended, or approved, or that such person's  
13 abilities or qualifications have in any respect been passed  
14 upon, by the state or any agency or officer thereof or by  
15 the United States or any agency or officer thereof.

16 (3) Any untrue statement of a material fact or any  
17 omission to state a material fact necessary in order to  
18 make the statements made, in the light of the circum-  
19 stances under which they were made, not misleading.

20 Section 7. Cease and desist orders, administrative  
21 fines.--

22 (1) The department may issue and serve upon a  
23 person a cease and desist order whenever ~~the department~~<sup>+</sup>  
24 finds that such person is violating, has violated, or is  
25 about to violate any provision of this chapter, any rule  
26 promulgated or order entered by the department hereunder,  
27 or any written agreement entered into <sup>+</sup>by or on behalf of  
28 such person <sup>+</sup>with the department. Cease and desist orders  
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cf.  
517 221

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under this section shall be issued in accordance with the  
~~Administrative Procedure Act~~

(2) The department may impose an administrative  
fine not to exceed \$1,000 against any person found to have  
violated any cease and desist order of the department. All  
fines collected under this section shall be paid into the  
State Treasury and credited to the General Revenue Fund.

5/17 201

Section 8. Injunction to restrain violations.--

(1) When it shall appear to the department, either  
upon complaint or otherwise, that a person has engaged or  
is about to engage in any act or practice constituting a  
violation of this chapter or a rule or order hereunder, the  
department may investigate, and whenever it shall believe  
from evidence satisfactory to it that any such person has  
engaged, is engaged, or is about to engage in any act or  
practice constituting a violation of this chapter or a rule  
or order hereunder, the department may, in addition to any  
other remedies, bring action in the name and on behalf of  
the state against such person and any other person con-  
cerned in or in any way participating in or about to  
participate in such practices or engaging therein or doing  
any act or acts in furtherance thereof or in violation of  
this chapter to enjoin such person or persons from continu-  
ing such practices or engaging therein or doing any act or  
acts in furtherance thereof or in violation of this chap-  
ter In any such court proceedings, the department may  
apply for, and on due showing be entitled to have issued,  
the court's subpoena requiring forthwith the appearance of

5/17 201

1 any defendant and his employees, salesmen, or agents and  
2 the production of documents, books, and records that may  
3 appear necessary for the hearing of such petition, to  
4 testify or give evidence concerning the acts or conduct or  
5 things complained of in such application for injunction.  
6 In such action, the <sup>equity</sup> court shall have jurisdiction of the  
7 subject matter, and a judgment may be entered awarding such  
8 injunction as may be proper.

9 (2) In addition to all other means provided by law  
10 for the enforcement of any temporary restraining order,  
11 <sup>temporary</sup> preliminary injunction, or permanent injunction issued in  
12 any such court proceedings, the court shall have the power  
13 and jurisdiction, upon application of the department, to  
14 impound and to appoint a receiver or administrator for the  
15 property, assets, and business of the defendant, including,  
16 but not limited to, the books, records, documents, and  
17 papers appertaining thereto. Such receiver or administra-  
18 tor, when appointed and qualified, shall have all powers  
19 and duties as to custody, collection, administration, wind-  
20 ing up, and liquidation of said property and business as  
21 shall from time to time be conferred upon him by the court.  
22 In any such action, the court may issue orders and decrees  
23 staying all pending suits and enjoining any further suits  
24 affecting the receiver's or administrator's custody or pos-  
25 session of the said property, assets, and business or, in  
26 its discretion, may with the consent of the presiding judge  
27 of the circuit require that all such suits be assigned to  
28 the circuit court judge appointing the said receiver or  
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CODING Words in ~~struck through~~ type are deletions from existing law, words underlined are additions.

1 administrator.

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

12 Section 9. Investigations by the department.--

13 (1) The department may make investigations, within  
14 or outside this state, when necessary to determine whether  
15 a person has violated or is about to violate any provision  
16 of this chapter or of any rule or order hereunder.

17 (2)(a) In the course of or in connection with an  
18 investigation by the department pursuant to the provisions  
19 of subsection (1) the department shall have the power  
20 through such persons designated in the department's order.

- 21 1. To administer oaths and affirmations;  
22 2. To take or cause to be taken testimony and  
23 depositions; and  
24 3. To issue, revoke, quash, or modify subpoenas and  
25 subpoenas duces tecum under the seal of the department or  
26 to cause any such subpoena or subpoena duces tecum to be  
27 issued by any county court judge or clerk of the circuit  
28 court or county court to require persons to be or appear  
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*Order*

1 before the department at a time and place to be therein  
2 named and to bring such books, records, and documents for  
3 inspection as may be therein designated. Such subpoenas may  
4 be served by a representative of the department expressly  
5 authorized in writing by the department for such purpose or  
6 may be served as otherwise provided for by law for the  
7 service of subpoenas.

8 (b) In connection with any such investigation, the  
9 department may permit a person to file a statement in  
10 writing, under oath or otherwise as the department deter-  
11 mines, as to facts and circumstances specified by the  
12 department

13 (3)(a) In the event of substantial noncompliance  
14 with a subpoena issued or caused to be issued by the  
15 department pursuant to this section, the department may  
16 petition the circuit court of the county in which the  
17 person subpoenaed resides or has its principal place of  
18 business for an order requiring the subpoenaed person to  
19 appear and testify and to produce such books, records, and  
20 documents as are specified in such subpoena duces tecum.  
21 The department is entitled to the summary procedure pro-  
22 vided in s. 51.011, and the court shall advance the cause  
23 on its calendar.

24 (b) A copy of the petition shall be served upon the  
25 person subpoenaed by any person authorized by this section  
26 to serve subpoenas, who shall make and file with the court  
27 an affidavit showing the time, place, and date of service.

28 (c) Failure to comply with an order granting, in  
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1 whole or in part, a petition for enforcement of a subpoena  
2 shall be a contempt of court

3 (4) Witnesses shall be entitled to the same fees  
4 and mileage to which they may be entitled by law for  
5 attending as witnesses in the circuit court, except where  
6 such examination or investigation is held at the place of  
7 business or residence of the witness

8 (5) The material compiled by the department in an  
9 investigation under this chapter is confidential until the  
10 investigation is complete. The material compiled by the  
11 department in an investigation under this chapter remains  
12 confidential after the department's investigation is com-  
13 plete if the department has submitted the material or any  
14 part of it to any law enforcement agency and that agency  
15 has not completed its investigation or prosecution.

16 Section 10. Burden of proof.--In any complaint,  
17 information, indictment, writ, or proceeding brought under  
18 this chapter it shall not be necessary to negate any  
19 exemption as may be provided in this chapter. The burden of  
20 proof to establish the right to an exemption provided by  
21 this chapter shall be upon the party claiming the benefit  
22 of such exemption

23 Section 11. Penalty.--Whoever violates any of the  
24 provisions of this chapter is guilty of a felony of the  
25 third degree, punishable as provided in s. 775.082, s.  
26 775.083, or s. 775.084. The statute of limitations for  
27 prosecution of offenses committed under this chapter shall  
28 be 5 years

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Section 12 This act shall take effect October 1, 1984.

CODING Words in ~~struck through~~ type are deletions from existing law, words underlined are additions.

# Bill Analysis

S. 19/1303



## Florida House of Representatives

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore  
Committee on Commerce

Samuel P. Bell, III  
Chairman  
Dexter W. Lehtinen  
Vice Chairman

### FINAL STAFF SUMMARY

CS/HB 797 by Commerce & Silver Date: June 11, 1984  
(as enacted by the Legislature)  
relating to the Florida Became Law: June 11, 1984  
Investor Protection Act  
Committee Consideration: Ch. 84-159, Laws of Florida  
Commerce, Appropriations  
Identical\*/Similar Bills: Effective Date: \_\_\_\_\_  
\*CS/SB 766 June 11, 1984

#### I. SUMMARY AND PURPOSE

This bill creates an act to be known as the Florida Investor Protection Act. Basically the bill accomplishes two things:

(1) It gives the Department of Banking and Finance jurisdiction over sales or offers to sell investments when such sales or offers involve fraud; boiler room operations involving specified fraud; and acts or practices constituting a violation of the Federal Commodity Exchange Act. Persons found in violation of the act's prohibition against fraudulent investment sales or fraudulent boiler room operations will be guilty of a third degree felony. In addition, persons harmed by violations of these prohibitions are given a right to rescission and damages.

(2) The bill makes a number of substantive and technical amendments to the existing Florida Securities Act (Chapter 517, F.S.). Substantive amendments to the Act include exempting from registration certain securities which currently must be registered; and, requiring filing with the Department specified currency transaction reports which may then be accessed by law enforcement agencies or by the Department of Revenue. Technical amendments to the Act include requiring registration of branch offices of a securities dealer or investment adviser; and, providing a procedure to ensure that disbursements made to individuals from the Securities Guaranty Fund are processed in a fair and equitable manner.

## II. CURRENT LAW AND EFFECT OF CHANGES

### A. CURRENT LAW

#### Securities

Chapter 517 of the Florida Statutes is the Florida Securities Act which governs all securities transactions in or from the state of Florida. The Act mandates registration of securities, securities' dealers, investment advisers, persons associated with dealers and advisers, and branch offices. Procedures and requirements governing registration are provided. The Act exempts certain securities, transactions, and persons from the registration requirements. Sanctions are provided for noncompliance with the registration requirements as well as for engaging in fraudulent transactions, fraudulent representations or misrepresentations and other violations of the Act.

The Department of Banking and Finance is charged with administering the Act and is authorized to make necessary rules; revoke, deny or suspend registrations; conduct investigations; collect fees; enjoin violations; and issue cease and desist orders. All fees and charges collected by the department are paid into the State Treasury and credited to the General Revenue Fund. The Legislature is authorized to make an annual appropriation to the department as necessary for the administration of the Act.

Under the act, the Department of Banking and Finance (hereafter referred to as department) has jurisdiction to proceed against persons involved in proscribed securities activities. Such proscribed activities include fraudulent transactions (s. 517.301) and false representations (s. 517.311). The department is authorized by the act to conduct investigations. If after an investigation the department believes a person has violated any provision of the act, it has three recourses as follows:

(1) Section 517.191 allows the department to investigate any complaint whenever it believes from evidence that such person is violating or about to violate the act. If warranted after the investigation, the department may bring an action to enjoin such person or persons from continuing such fraudulent practices. The equity courts have jurisdiction over such injunction and proceedings and a judgment may be entered awarding such injunction as may be proper. The court is further given authority to impound any property or assets of the defendant.

(2) Section 517.221 allows the department to issue and serve upon a person a cease and desist order whenever the department has reason to believe that such person is violating or is about to violate any provision of the act. The cease and desist order must contain a statement of facts and a notice for a hearing which must be requested within 21 days of the cease and desist order. Under the rules of the department, the department whenever possible is to issue a notice of intent to issue a cease and desist order prior to the effectiveness of such order. However, under section 120.59(3), the department may issue an immediate final order but only upon the condition that the agency head finds an "immediate danger to the public health, safety, or welfare requires an immediate final order" and the order must "recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoicable from the date rendered."

Under s. 120.68(3), the filing of a petition for review of a final order does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter

of right upon such conditions as are reasonable, unless the court, upon a petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state.

(3) The final recourse of the department is provided in s. 517.302, which provides criminal penalties for violations of the act. A criminal action under this section would be brought by a state attorney though the department could file a complaint with the state attorney alleging violations of the act.

#### Commodities

With respect to commodities (as defined by federal law to include everything but onions), there is no Florida law specifically regulating or governing these transactions. This is because prior to the Futures Trading Act of 1982 passed by Congress, regulation of commodities was the exclusive province of the federal government pursuant to the Commodity Exchange Act (7 U.S.C. ss. 1 et seq.). However, the Futures Trading Act of 1982 amended 7 U.S.C. s. 13a-2 to allow states to prosecute and enjoin violators of the Commodity Exchange Act.

The Federal Commodity Exchange Act provides in effect that all future transactions in commodities covered by the Act must be made on an exchange designated as a contract market. The Act prohibits undesirable practices and transactions such as: price manipulation and cornering of a commodity; cheating or defrauding of customers; making false reports to customers; disseminating false crop or market information; fictitious transactions; "put," "calls," or "privileges."

#### Investments

There is no Florida law specifically addressing or regulating investments. However, sections 501.201-501.213, known as Florida's little FTC Act (Federal Trade Commission Act), prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Civil remedies are provided for violations.

#### Boiler Rooms

There is currently no law in Florida addressing boiler room solicitations. There are laws governing obscene or harassing phone calls (s. 365.16) and automated telephone solicitations (s. 365.165). The Department of Banking and Finance under the Florida Securities Act (Ch. 517) only has jurisdiction to proceed against those boiler rooms involved in securities activities proscribed by the Florida Securities Act.

### B. EFFECT OF CHANGES

This bill renames the Florida Securities Act (Chapter 517, F.S.) as the Florida Investor Protection Act, and amends Chapter 517 to expand the jurisdiction of the Department of Banking and Finance to include sales or offers to sell investments when such sales or offers to sell involve fraud; boiler room operations involving specified fraud; and violations of the Federal Commodity Exchange Act. This CS is composed of nine sections as follows:

SECTION 1 renames the Florida Securities Act as the Florida Investor Protection Act.

SECTION 2 amends the definitional section of Chapter 517 to include definitions of "boiler room", "branch office," and "investment." The definition of "dealer" is amended to include

non-bank subsidiaries of a bank. The current practice of not considering banks as dealers has not been changed by this bill. The current definition of "sale or sell" is amended to accommodate any contract of sale or disposition of any investment, rather than just securities.

This section additionally amends s. 517.051 to provide that securities issued or guaranteed by any instrumentality of the U.S., any state, or any political subdivision or agency of any of the above, are exempt from registration requirements. Currently only those securities issued by the above listed governments, agencies, and political subdivisions thereof are exempt.

This section also includes "federally chartered savings banks" in the list of banks which may issue exempt securities.

SECTION 3 technically amends s. 517.061 relating to exempt transactions.

SECTION 4 makes a number of substantive changes in current law as follows:

- It requires branch offices to register with the Department of Banking Finance (hereafter referred to as "Dept.") and prohibits operation of an unregistered branch office. Though this new language explicitly provides for registration, currently there is language in the Act (i.e. ss. 517.12(9) and (10) which addresses such registration;

- It includes "associated person of an investment adviser" in the group that must be registered with the Dept.;

- It amends an incorrect reference to the Federal Securities Exchange Act of 1934;

- It renames the Security Guaranty Fund the Securities Guaranty Fund;

- It amends the list of persons the Dept. may issue licenses to by deleting "salesman, officer, office" and adding instead "associated person or branch office." This new language encompasses the old but is more expensive;

- It requires investment advisers to notify the Dept. whenever the adviser terminates a registered associated person. Currently only dealers have to provide this information to the Dept.;

- It includes "branch office" in the list of persons that must maintain certain books and records specified by the Dept.;

- It requires every dealer, investment adviser or branch office to keep a record of all currency transactions greater than ten thousand dollars (\$10,000) and to file reports of the same with the Dept. Such reports are to be confidential though they may be accessed by any law enforcement agency or by the Department of Revenue.

SECTION 5 renames the Security Guaranty Fund as the Securities Guaranty Fund, and "special fees" as "assessment fees" (technical amendment). This section also provides that persons suffering monetary damages as a result of specified acts committed by a dealer, investment adviser, or associated person may seek recovery from the Fund. Currently only those persons harmed by a dealer, salesman, or investment adviser may seek recovery.

SECTION 6 amends the provisions of the Act dealing with payments from the Securities Guaranty Fund to judgment, creditors by providing a procedure for making such payments. Under current law, a person who suffers monetary damages as a result of either an unregistered security or a fraudulent securities transaction, and who sues the dealer, salesman, or investment adviser causing such damage, may be eligible to receive reimbursement from the Securities Guaranty Fund in the event a judgment is actually received against the dealer, salesman, or investment adviser if such defendant cannot satisfy the judgment. Recovery from the fund is limited to \$10,000 per claimant not to exceed \$100,000 per dealer, salesman, or investment adviser.

This section of the bill amends these current provisions to provide a procedure whereby all claimants against the same dealer, investment adviser, or associated person who notify the Dept. of a pending suit or judgment against the dealer, investment adviser, or associated person within two years may all be considered in determining pro rata shares of reimbursement from the fund. The only time this will arise is when there are claims against the same dealer, investment adviser, or associated person which exceed the \$100,000 cap. Under current law, claimants are treated on a first judgment, first reimbursement basis, even though the Dept. may be aware of other potential claimants with pending suits, since such persons are to notify the Dept. of such suits when filed. This new language provides for a more equitable distribution of the fund than is currently provided.

The other substantive change made by this section provides that when claims are filed against the fund on accounts owned by more than one person, all such owners will be treated as a single eligible claimant with respect to payment from the fund.

SECTIONS 7 and 8 amend current provisions of the Act relating to the Security Guaranty Fund to accommodate the fund's new name. These are technical amendments.

SECTION 9 amends ss. 517.211(3)(a) and (4)(a) and (b) to include an action for rescission or damages for investments sold in violation of s. 517.301 or s. 517.311.

SECTION 10 amends s. 517.241 (Remedies) to provide that nothing contained in Chapter 517 shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of any investment covered by the act. Currently this provision only extends to securities.

SECTION 11 creates a new section in Chapter 517 (i.e., s. 517.250) to govern prohibited practices with respect to boiler room operations, and sales or offers to sell securities or investments. Paragraph (1)(a) of this newly created section prohibits offering or selling in or from this state any security or investment in violation of s. 517.301 (Fraudulent transactions; falsification or concealment of facts.--) or s. 517.311 (False representations; deceptive words, enforcement.--). Paragraph (1)(b) prohibits managing, supervising, controlling or owning any boiler room in this state which offers for sale or sells any security or investment in violation of paragraph (1)(a). Subsection (2) provides a right of rescission and damages to any person harmed by a violation of subsection (1).

SECTION 12 creates a new section in Chapter 517 to prohibit violations of the Federal Commodity Exchange Act. Any violation of this section constitutes a third degree felony. This provision is Florida's response to the Futures Trading Act of 1982 which allows states to prosecute and enjoin violations of the Federal Commodity Exchange Act. Prior to passage of the 1982

Act, the federal government had exclusive jurisdiction over such violations.

SECTION 13 amends s. 517.301 (Fraudulent transactions; falsification or concealment of facts.--) to cover investments. Currently the prohibitions of this section only apply to securities.

SECTION 14 amends s. 517.311 (False representations; deceptive words; enforcement.--) to cover investments. Currently this prohibition against false representations only applies to securities.

SECTION 15 sunsets those sections of Chapter 517 amended or created by this bill on October 1, 1990.

SECTION 16 provides that this act is effective upon becoming a law.

### III. ECONOMIC IMPACT CONSIDERATIONS

#### A. PRIVATE SECTOR CONSIDERATIONS

This bill is intended to and should serve to protect the investing public in and outside of Florida from being defrauded out of their investment funds by unscrupulous and fraudulent commodity and investment salesmen and boiler room operators. According to the Office of the Comptroller, it is impossible to quantify the extent of the fraudulent securities, commodities and investment problem in Florida, though the known losses by the public are significant. The Division of Securities of the Office of the Comptroller in 1983 took action against 46 boiler room operations unlawfully selling securities. The Commodity Futures Trading Commission has instituted lawsuits involving over 100 Florida companies. In September 1983, the U.S. Attorney for the Southern District of Florida brought suit against 24 individuals in connection with the boiler room operations of three interrelated Miami based corporations -- U.S. Oil and Gas Corp., Eagle Oil and Gas Corp., and the Stratford Co. The individuals, who were officers, directors and salesmen of these corporations, as well as a member of the Better Business Bureau of Miami, were indicted for making false and fraudulent representations and promises in connection with oil and gas lease advisory service contracts. According to the federal indictment, over a period of 40 months, the boiler room operations of these three companies bilked the investing public out of \$56 million dollars.

By explicitly delegating authority to the Department of Banking and Finance to prohibit fraudulent activities involving investments or operation of a boiler room or violations of the federal Commodity Exchange Act, this legislation should reduce losses resulting from investment in fraudulent schemes since it enables the Dept. to shutdown and take action against fraudulent and unscrupulous sales of securities, commodities and investments.

#### B. PUBLIC SECTOR CONSIDERATIONS

This bill will have some economic impact in the public sector, though the impact at this time is undeterminable. This bill in essence gives the Department of Banking and Finance authority to investigate, enjoin, and take action against persons involved in or connected with fraudulent sales of investments and against persons violating provisions of the Commodity Exchange Act. Since such activity on behalf of the Dept. may necessitate hiring additional personnel and expending funds to carry out the duties imposed under this Act, there will be some public impact.



However, at this time the Dept. has not requested any additional personnel or funds to carry out this act.

#### IV. COMMENTS

This bill contains three substantive sections -- one relating to sales or offers to sell any investment when such sale or offering involves fraud, or when such fraudulent sale or offering has involved operation of a boiler room; one relating to violation of the Federal Commodity Exchange Act; and one requiring filing with the Dept. specified currency transaction reports which may then be accessed by law enforcement agencies or by the Dept. of Revenue.

The prohibition against sales or offerings of investments is necessitated by the fact that the investing public -- in and outside of Florida -- is being bilked out of millions of dollars annually by schemes involving fraudulent investments, or operation of boiler rooms, while the Department of Banking and Finance currently has no authority to take action against such schemes and operations unless they are selling securities. Frequently, the product offered for sale in such a scheme is structured specifically to avoid being classified as a security, thereby leaving the department impotent. This bill alleviates this situation and enables the department to protect innocent investors from such fraudulent schemes and operations by allowing it to take action against such schemes and operations involving fraudulent or investments.

The provision in this act making a violation of the Federal Commodity Exchange Act a violation of state law resulted from passage by Congress of the Futures Trading Act of 1982 (P.L. 97-444). The Commodity Exchange Act passed by Congress in 1922 expressly preempted state regulatory law in the area of commodity exchanges. According to the legislative history, this was done in a desire for knowledgeable and uniform enforcement of the Commodity Exchange Act. A report of the Senate Committee on Governmental Affairs in 1982, however, found this fact to be largely responsible for an explosive growth of commodities fraud and recommended partial removal of federal preemption. What has come to be known as the "open season" provisions of the Futures Trading Act of 1982 are the result of that recommendation. Under the 1982 federal legislation, the anticipated role of the states in maintenance of an orderly national investment market was very much expanded. Exclusive jurisdiction of the Commodity Futures Trading Commission (CFTC) has been retained in regulation of the nation's duly constituted commodity exchanges and regulation of authorized commodity options programs and leverage contracts. But, an "open season" has been declared on commodities fraud by authorizing state officials to apply any state or federal law against persons engaged in "off-exchange" commodities trading. This removal of federal preemption permits the Florida Legislature to enact state laws which, for the first time, can be applied to commodities fraud in this state. This bill is Florida's response to the open season provision of the 1982 Act, and it is intended to confer upon the Dept. the maximum power allowed by Congress.

The provisions contained in this bill relating to currency transaction reports (CTR), were originally contained in HB 861, which related to the Florida Securities Act. All noncontroversial portions of HB 861 were amended onto the CS/HB 797 on the House floor. With the exception of the CTR language, those portions of HB 861 amended onto CS/HB 797 were technical in nature.

Statement of Substantial Changes in Committee Substitute

House Bill 797 envisions creating either a new chapter in the Florida Statutes or a new part to an existing chapter in the statutes to cover the regulation of fraudulent boiler room activities and violations of the Federal Commodity Exchange Act. In creating this new portion of the statutes, the bill repeats a great deal of the language contained in the existing Florida Securities Act (Chapter 517). Some of the language is copied verbatim, other language is amended to extend to commodities and investments. This CS amends and merges the substantive provisions of HB 797 into the existing Chapter 517, and renames that chapter as the Florida Investor Protection Act to accommodate its expanded scope. In accomplishing this merger, those sections of the statutes copied in HB 797 were merely amended to cover investments. The definitional section of Chapter 517 was amended to include definitions of "boiler room" and "investment." In addition, the definition of "sale or sell" was amended to extend beyond securities to any investment. Section 517.241 of the current act (which deals with Remedies) was also amended to cover investments. This section was not in HB 797. In addition to the above, the following substantive changes were made in CS/HB 797:

1. All references in the bill to a commodity or commodities were deleted, except in Section 6 of this bill which prohibits violations of the federal Commodity Exchange Act.

2. The definition of boiler room is amended to remove the exemptions contained in HB 797 and to exclude the requirement of fraud. However, section 5 of the bill amends the prohibited practices provisions to compensate for this exclusion (see 6. below).

3. The definition of "investment" is amended to only include those investments which involve fraudulent misrepresentations or omissions. In addition, specifically exempted from coverage are: (1) A "business opportunity" as defined in Chapter 559; (2) Lands subject to the jurisdiction of chapter 498; and (3) the offer or sale of tangible personal property made in accordance with the following conditions: (a) there are no specific representations or guarantees made by the offeror or seller as to economic benefit to be derived from the purchase; (b) the property is delivered to the purchaser within 30 days after sale except that such 30 day period may be extended by the department if market conditions so warrant; and (c) the seller has offered the purchaser a full refund in writing exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that in no event shall the amount of refund exceed the bid price in effect at the time the property is returned to the seller.

4. The definition of "telephone communication" is deleted as unnecessary.

5. All references to a "plan or program of" investment have been deleted and replaced simply with "investment."

6. The prohibited practices section of HB 797 (section 5 of that bill) was broken down into two new sections in the statutes:

(1) Section 517.250 was created to prohibit selling or offering for sale any investment when such sale or offering involves specified fraud; as well as boiler room operations involving specified fraud; and

(2) Section 517.275 was created to prohibit violations of the Federal Commodity Exchange Act.

In creating s. 517.250, the language of HB 797 was expanded as follows:

(a) To provide that any offer or sale of a security, or investment which violates s. 517.301 or s. 517.311 is prohibited whether sold from a boiler room or otherwise;

(b) To provide that it is unlawful for any person to directly or indirectly manage, supervise, control or own either alone or in association with others, any boiler room which has sold or offered for sale any security or investment in violation of (a); and

(c) To provide that purchasers of any item sold in violation of this section are given a right to rescission and damages as currently provided in chapter 517 for purchasers of fraudulent or unregistered securities. This was not provided for in HB 797.

7. The effective date is accelerated from October 1, 1984, to the date upon which this Act becomes a law in order to allow the department to move as quickly as possible against those fraudulent schemes and operations currently existing.

8. All of the noncontroversial provisions of HB 861, amending the Florida Securities Act, have been incorporated into this bill. Most of these additional sections are merely technical changes, however there are two substantive provisions added. The first is contained in Section 4 of the bill. It requires every dealer, investment adviser or branch office to keep a record of all currency transactions greater than ten thousand dollars and to file reports of the same with the Dept. Such reports are to be confidential though they may be accessed by any law enforcement agency or by the Dept. of Revenue.

The second substantive provision exempts from registration certain securities which currently must be registered (see Section 2 of the bill as it amends s. 517.051, F.S.).

## V. LEGISLATIVE HISTORY

### A. ENACTED BILL

HB 797 was referred to the House Committees on Commerce and Appropriations. The Banking and Commerce Subcommittee of the Commerce Committee reported the bill favorably as a Proposed Committee Substitute on April 11, 1984. The full Commerce Committee first considered the bill on April 16, 1984, amendments were adopted but the bill was left pending when time expired. On April 24, 1984, the bill again was considered by the Committee and passed as a Committee Substitute. The bill was then sent to the Appropriations Committee, but was withdrawn on May 16, 1984 without being heard. That same day, the bill was placed on the House Calendar where it remained until being placed on the House Special Order Calendar on May 24, 1984. The CS was read for the first and second times on May 29, 1984. After the second reading two amendments were adopted. These amendments had the effect of striking everything in the bill after the enacting clause and inserting a new version of the bill which was combination of CS/HB 797 (as passed by the Commerce Committee) and the noncontroversial provisions of HB 861 (which also amended the Florida Securities Act. [HB 861 subsequently died in the Appropriations Committee on June 1st.] The second amendment adopted was a title amendment. After both amendments were adopted, the bill was read for a third time and passed by a vote of 109-0 (HJ 752).

Once received in the Senate, the bill was substituted for CS/SB 766, which was identical to the CS/HB 797 passed by the House Commerce Committee. It was passed on May 30, 1984 by a vote of 34-0 (SJ572). On May 31, 1984, the bill was signed by the Officers and presented to the Governor.

B. DISPOSITION OF COMPANION

SB 766 was referred to the Senate Commerce Committee, which reported the bill favorably as a Committee Substitute on May 8, 1984, and placed it on the Senate Calendar. It remained on the Senate Calendar until May 30, 1984 when it was placed on the Senate Special Order Calendar. That same day, the House Bill was substituted for the Senate bill, which was laid on the table. The amended House Bill was passed by the Senate by a vote of 34-0 (SJ 572).

Prepared by:

  
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Staff Director:

  
Wyatt T. Martin

Journal  
of the  
Florida  
House of Representatives

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Eighty-sixth  
Regular Session  
since Statehood in 1845  
April 3 through June 1, 1984

**Including a record of transmittal of Acts subsequent to sine die adjournment**

Combee	Hawkins, L R	McEwan	Selph
Cortina	Hawkins, M E	Meffert	Shackelford
Cosgrove	Hazouri	Messersmith	Shelley
Crady	Healey	Metcalf	Silver
Crotty	Hill	Mills	Simon
Danson	Hodges	Mitchell	Simone
Dantzler	Hollingsworth	Morgan	Smith
Davis	Jamerson	Murphy	Spaet
Deutsch	Johnson, B L	Nergard	Stewart
Drage	Johnson, R C	Ogden	Thomas
Dudley	Johnson, R M	Paycic	Tobiasen
Dunbar	Jones, C F	Patchett	Tobin
Easley	Jones, D L	Peeples	Upchurch
Evans-Jones	Lawson	Ready	Wallace
Figg	Lehtinen	Reaves	Ward
Friedman	Lewis	Reddick	Watt
Gallagher	Liberti	Reynolds	Webster
Gardner	Lippman	Robinson	Weinstock
Gordon	Locke	Rochlin	Wetherell
Grant	Logan	Ros	Woodruff
Grindle	Mackenzie	Sample	Young
Hargrett	Martin	Sanderson	
Harris	Martinez	Sansom	

Nays—1

Titone

Votes after roll call

Yeas—Williams, Kelly  
Nays to Yeas—Titone

So the bill passed, as amended, and was immediately certified to the Senate after engrossment.

REP BELL IN THE CHAIR

By the Committee on Commerce and Representatives Silver, Tobin, and Mackenzie—

**CS/HB 797**—A bill to be entitled An act relating to investment solicitation, amending s 517 011, F S, redesignating the "Florida Securities Act" as the "Florida Investor Protection Act", amending s 517.021, F S., providing definitions, amending s 517.211, F S., relating to remedies available with respect to unlawful offers or sales of securities or investments; amending s 517 241, F S., relating to remedies, creating s 517.251, F S, providing for prohibited practices and remedies with respect to certain securities, investments, or boiler rooms, creating s 517.275, F S, relating to prohibited practices with respect to commodities, amending s 517 301, F.S., relating to fraudulent transactions, amending s 517 311, F.S., prohibiting certain false representation with respect to investments, providing for review and repeal; providing an effective date

—was read the first time by title. On motion by Rep Silver, the rules were waived and the bill was read the second time by title

Representative Kutun offered the following amendment:

**Amendment 1**—On page 1, line 25, strike everything after the enacting clause and insert Section 1. Section 517 011, Florida Statutes, is amended to read

517.011 Short title.—This chapter may be cited as the "Florida Investor Protection Securities Act."

Section 2. Section 517 021, Florida Statutes, is amended to read.

517.021 Definitions —When used in this chapter, unless the context otherwise indicates, the following terms shall have the following respective meanings

(1) "Accredited investor" means any person who comes within any of the following categories, or who an issuer reasonably be-

lieves comes within any of the following categories, at the time of the sale of the securities to that person

(a) Any bank as defined in s 3 (a)(2) of the Securities Act of 1933, 15 U S C s 77 c (a) (2), whether acting in its individual or fiduciary capacity or any insurance company as defined in s 2 (13) of that act, any investment company registered under the Investment Company Act of 1940 or a business development company as defined in s 2 (a) (48) of that act, any small business investment company licensed by the United States Small Business Administration under s. 301 (c) or (d) of the Small Business Investment Act of 1958, or any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in s 3 (21) of such act, which is either a bank, insurance company, or registered investment adviser or if the employee benefit plan has total assets in excess of \$5 million.

(b) Any private business development company as defined in s 202 (a) (22) of the Investment Advisers Act of 1940.

(c) Any organization described in s 501 (c) (3) of the Internal Revenue Code with total assets in excess of \$5 million.

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold or any director, executive officer, or general partner of a general partner of that issuer

(e) Any person who purchases at least \$150,000 worth of the securities being offered, when the price of the purchaser's total purchase does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following:

- 1 Cash.
- 2 Securities for which market quotations are readily available
- 3 An unconditional obligation to pay cash or securities for which market quotations are readily available, which obligation is to be discharged within 5 years of the sale of the securities to the purchaser
- 4 The cancellation of any indebtedness owed by the issuer to the purchaser
- (f) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1 million.

(g) Any natural person who had an individual income in excess of \$200,000 in each of the 2 most recent years and who reasonably expects an income in excess of \$200,000 in the current year

(h) Any entity in which all of the equity owners are accredited investors under paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (f), or paragraph (g)

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(3) "Agent" means salesman as herein defined.

(4) "Associated person" means any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions or any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial

(5) "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(6) (5) "Broker" means dealer as herein defined.

(7) (6) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, di-

rectly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8) (7) "Dealer" means any person, other than a salesman registered under this chapter, who engages, either for all or part of his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term "dealer" also includes any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by said issuer. The term "dealer" does not include any licensed practicing attorney who renders or performs any of said services in connection with the regular practice of his profession, any bank authorized to do business in this state, except nonbank subsidiaries of a bank; any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers, any wholesaler selling exclusively to dealers, any person buying and selling exclusively through a registered dealer or stock exchange, or, pursuant to s 517 061 (12), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.

(9) (8) "Department" means the Department of Banking and Finance.

(10) "Investment" means any commitment of money or property, not otherwise a security as defined in this chapter, in expectation of receiving an economic benefit, offered or sold in violation of s 517 301 or s 517.311, except that the term investment shall not apply to the following:

(a) "Business opportunity" as defined in the Sale of Business Opportunities Act, ss 559.80-559.815,

(b) Lands subject to the jurisdiction of chapter 498, or

(c) The offer or sale of tangible personal property made in accordance with the following conditions:

1. There are no specific representations or guarantees made by the offeror or seller as to economic benefit to be derived from the purchase;

2. The tangible personal property is delivered to the purchaser within 30 days after sale, except that such thirty day period may be extended by the department if market conditions so warrant, and

3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that in no event shall the amount of such refund exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, then the amount of such refund shall be based on the bid price for such property at the next opening of such market.

(11) (9) "Investment adviser" means any person who for compensation engages for all or part of his time, directly, indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for such services. The term "investment adviser" does not include any licensed practicing attorney or certified public accountant who renders or performs any of said services in connection with the regular practice of his profession, any bank authorized to do business in this state, any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in

this state, any trust company having trust powers which it is authorized to exercise in the state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers, any person who renders investment advice exclusively to insurance or investment companies, or any person who does not hold himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.

(12) (10) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(13) (11) "Offer to sell," "offer for sale," or "offer" means any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest therein, for value.

(14) (12) "Person" means a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, or an unincorporated organization.

(15) (13) "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(16) (14) "Sale" or "sell" means any contract of sale or disposition of any investment, a security, or interest in a security, for value. With respect to a security or interest in a security, the term defined in this subsection does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security, but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(17) (15) "Salesman" means any natural person, other than a dealer, employed, appointed, or authorized by a dealer or issuer to sell securities in any manner or act as an investment adviser as defined in this section. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer are not salesmen within the meaning of this definition.

(18) (16) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, whiskey warehouse receipt or other commodity warehouse receipt, or right to subscribe to any of the foregoing, certificate of interest in a profit-sharing agreement or the right to participate therein; certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease, or the right to participate therein, collateral trust certificate, reorganization certificate, preorganization subscription, or any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings, interests in or under a profit-sharing or participation agreement or scheme, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security.

(19) (17) "Securities option" means any 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.

(20) ~~(18)~~ "Underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking, provided that a person shall be presumed not to be an underwriter with respect to any securities which he has owned beneficially for at least 1 year, and provided, further, that a dealer shall not be considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer, provided, further, that in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person shall include the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned

(21) "Branch office" means any office of a dealer or investment adviser located in this state other than the principal office of the dealer or investment adviser which is owned or controlled by the dealer or investment adviser for the purpose of conducting a securities business

517 051 Exempt securities.—The registration provisions of s 517 07 do not apply to any of the following securities

(1) Any security issued or guaranteed by the United States or any territory or insular possession thereof, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof

(3) Any security issued or guaranteed by:

(a) A national bank or a federally chartered savings and loan association or federally chartered savings bank, or the initial subscription for equity securities in such national bank or federally chartered savings and loan association or federally chartered savings bank;

Section 3 Subsection (20) of section 517 061, Florida Statutes, is hereby repealed, and paragraph (a) of subsection (19) of said section is amended to read

517.061 Exempt transactions.—The registration provisions of s 517 07 do not apply to any of the following transactions:

(19) (a) The offer or sale of securities pursuant to a registration statement filed under the federal Securities Act of 1933, provided that prior to the sale the registration statement has become effective and the department has received.

1. A notice of intention to sell which has been executed by the issuer, any other person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person and which sets forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered in this state,

2. Copies of such documents filed with the Securities and Exchange Commission as the department may by rule require, and

3. An irrevocable written consent similar to that provided as required by s. 517.101

Section 4 Section 517.12, Florida Statutes, is amended to read.

517 12 Registration of dealers, associated persons, and investment advisers and branch offices —

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities in this state to persons thereof from offices outside this state, by mail or otherwise, unless the person has been registered with the department pursuant to the provisions of this section

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s 517 051 (1)-(8)

(3) Except as otherwise provided in s 517 061 (12)(a) 4 and ~~517 061 (20)(a) 3~~, the registration requirements of this section do not apply in a transaction exempted by s 517 061 (1)-(13), (15), and ~~(16) and (20)~~

(4) No investment adviser or associated person of an investment adviser shall engage in business from offices in this state, or render investment advice to persons thereof, by mail or otherwise, unless the investment adviser and associated persons have been registered with the department pursuant to this section. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to the department

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the department pursuant to the provisions of this section.

(6) ~~(6)~~ A dealer, associated person, or investment adviser, or branch office, in order to obtain initial registration, shall file with the department a written application, in a form which the department may by rule prescribe, verified under oath. Dealers and investment advisers shall also file an irrevocable written consent to service of civil process similar to that provided in s 517 101. The application shall contain such information as the department may require concerning such matters as

(a) The name of the applicant and the address of its principal office and each office in this state

(b) The applicant's form and place of organization and, if the applicant is a corporation, a copy of its articles of incorporation and amendments thereto or, if a partnership, a copy of the partnership agreement

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application

(d) The names and addresses of all salesmen of the applicant to be employed in this state and the offices to which they will be assigned

(7) ~~(6)~~ The application shall also contain such information as the department may require about the applicant, any partner, officer, or director of the applicant, any person having a similar status or performing similar functions, any person directly or indirectly controlling the applicant, or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant shall file a complete set of fingerprints taken by an authorized law enforcement officer. Such fingerprints shall be submitted to the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing. The department may waive, by rule, the requirement that applicants must file a set of fingerprints or the requirement that such fingerprints must be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The department may require information about any such applicant or person concerning such matters as.

(a) His full name, age, photograph, qualifications, educational and business history, and any other names by which he may have been known

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



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

(d) The names and addresses of other persons of whom the department may inquire as to his character, reputation, and financial responsibility.

(8) (7) The department may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any agent-applicant to successfully pass oral or written examinations. The examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory salesman. The department may waive the examination process when it determines that such examinations are not in the public interest. The department shall waive the examination requirements for any person who has passed any tests as prescribed in s 15 (b) (8) (7) of the Securities Exchange Act of 1934

(9) (8) The department may by rule require the maintenance of a minimum net capital for registered dealers and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public

(10) (9) An applicant for registration shall pay an assessment fee of \$100, in the case of a dealer or investment adviser, or \$20, in the case of an associated person. There shall be no fee for reaffiliation of a registered associated person. Each dealer and each investment adviser shall pay an assessment fee of \$50 for each office in this state, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s 517.131 (1) until such time as the Securities Security Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted

(11) (10) If the department finds that the applicant is of good repute and character and has complied with the provisions of this section and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, associated person, and branch office shall expire on December 31 of the year in which it became effective, except that the department may by rule provide for an equitable method of staggering the expiration dates of registrations using a date other than December 31 of each year. Registration may be renewed by furnishing such information as the department may require, together with payment of the fee required in subsection (10) (9) for dealers, investment advisers, associated persons, or branch offices

(12) (11) (a) The department may issue a license to a dealer, salesman, offices, office, or investment adviser, associated person, or branch office to evidence registration under this chapter. The department may require the return to the department of any license it may issue prior to issuing a new license

(b) Every dealer or investment adviser shall promptly file with the department, as prescribed by rules adopted by the department, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination

(c) Each dealer or investment adviser shall designate in writing to and register with the department a manager for each office the dealer or investment adviser has in this state, and each manager shall be registered as a principal

(13) (12) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the department may specify

(14) (13) A dealer, associated person, or investment adviser, or branch office registered under this section shall maintain such books and records as the department may prescribe by rule. The department shall have authority to visit and examine the affairs

and records of each registered dealer, associated person, or investment adviser, or branch office or require such records and reports submitted to it as it may require by rule

(15) Every dealer, investment adviser, or branch office registered or required to be registered with the department shall keep a record of all currency transactions in excess of \$10,000 and shall file reports as prescribed under Financial Recordkeeping Reg 31 C.F.R. Part 103, with the department when transactions occur in or from this state. Any law enforcement agency or the Florida Department of Revenue shall have access to and shall be authorized to inspect and copy any reports filed with the department pursuant to this subsection. Except as provided in this subsection, all reports filed with the department are confidential

(16) (14) In lieu of filing with the department the applications specified in subsection (6) (6), the fees required by subsection (10) (9), and the termination notices required by subsection (12) (11), the department may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository of the National Association of Securities Dealers, Inc., as developed under contract with the North American Securities Administrators Association, Inc.; provided, however, that such procedures shall provide the department with the information and data as required by this section

Section 5 Section 517.131, Florida Statutes, is amended to read

517.131 Securities Security Guaranty Fund —

(1) Effective November 1, 1978, the Treasurer shall establish a Securities Security Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12 (10) (9) and (11) (10) shall be allocated to the fund. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited in the Securities Security Guaranty Fund. If the fund at any time exceeds \$250,000, allocation collection of assessment special fees to for this fund shall be discontinued at the end of that license year, and such assessment special fees shall not be reimposed unless the fund is reduced below \$150,000 by disbursement made in accordance with s. 517.141

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

(a) A violation of s. 517.07

(b) A violation of s. 517.301

(3) Any person shall be eligible to seek recovery from the Securities Security Guaranty Fund if

(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections in subsection (2),

(b) Such person has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment,

(c) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no property or assets or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment,

(d) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court, and

(e) The act for which recovery is sought occurred on or after January 1, 1979

(4) Any person who files an action that may result in the disbursement of funds from the *Securities Security Guaranty Fund* pursuant to the provisions of s 517 141 shall give written notice by certified mail to the department as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the *Securities Security Guaranty Fund* if all of the conditions specified in subsection (3) are satisfied

Section 6 Section 517 141, Florida Statutes, is amended to read:

517 141 Payment from the fund —

(1) Any person who meets all of the conditions prescribed in s 517 131 may apply to the department for payment to be made to such person from the *Securities Security Guaranty Fund* in the amount equal to the unsatisfied portion of such person's judgment or \$10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages

(2) (b) Payments for claims shall be limited in the aggregate to \$100,000, regardless of the number of claimants involved, against any one dealer, salesman, or investment adviser, or associated person. If the total claims exceed the aggregate limit of \$100,000, the department shall prorate the payment based upon the ratio that the person's claim bears to the total claims filed

(3) *No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the department to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the department receives notice pursuant to s. 517 131 (4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the department as provided herein. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section.*

(a) *The department shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata share of the fund as provided in this section.*

(b) *Those persons who meet all of the conditions prescribed in s 517 131 and who have applied for payment pursuant to this section shall be entitled to receive their pro rata share of the total disbursement.*

(c) *Those persons who have filed notice with the department of a pending claim pursuant to s. 517.131 (4) but who are not yet eligible for payment from the fund shall be entitled to receive their pro rata share of the total disbursement once they have complied with subsection (1). However, in the event that the amount they are eligible to receive pursuant to subsection (1) is less than their pro rata share as determined herein, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata share of the total disbursement was less than the amount of their claim.*

(4) *Individual claims filed by persons owning the same joint account, or claims stemming from any other type of accounts maintained by a particular licensee on which more than one name appears, shall be treated as one eligible claimant with respect to payment from the fund.*

(5) (4) If at any time the money in the *Securities Security Guaranty Fund* is insufficient to satisfy any valid claim or portion thereof, the department shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in or

transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the department

(6) (2) Upon receipt by the claimant of the payment from the *Securities Security Guaranty Fund*, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the department

(7) (5) All payments and disbursements made from the *Securities Security Guaranty Fund* shall be made by the Treasurer upon a voucher signed by the Comptroller, as head of the department, or such agent as he may designate

Section 7 Section 517 151, Florida Statutes, is amended to read:

517 151 Investments of the fund.—The funds of the *Securities Security Guaranty Fund* shall be invested by the Treasurer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the *Securities Security Guaranty Fund*.

Section 8 Subsection (2) of section 517 161, Florida Statutes, is amended to read

517 161 Revocation, denial, or suspension of registration of dealer, investment adviser, or salesman.—

(2) The payment of any amount from the *Securities Security Guaranty Fund* in settlement of a claim or in satisfaction of a judgment against a licensee shall constitute prima facie grounds for the revocation of the license of such licensee

Section 9 Paragraph (a) of subsection (3) and subsection (4) of section 517.211, Florida Statutes, are amended to read

517.211 Remedies available in cases of unlawful sale.—

(3) In an action for rescission

(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment

(4) In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase, and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff

Section 10 Subsection (2) of section 517.241, Florida Statutes, is amended to read

517 241 Remedies.—

(2) Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of securities or investments, or the right of the state to punish any person for any violation of any law.

Section 11 Section 517 251, Florida Statutes, is created to read

517.251 *Securities, investments, boiler rooms; prohibited practices; remedies.—*

(1) *It is unlawful and a violation of this chapter for any person.*

(a) *To offer or sell in or from this state any security or investment when such offer or sale is in violation of s. 517 301 or s. 517.311, or*

(b) *To directly or indirectly manage, supervise, control, or own, either alone or in association with others, any boiler room in this state which sells or offers for sale any security or investment in violation of paragraph (a).*

(2) Any purchaser of a security or investment sold in violation of subsection (1) shall be entitled to rescind such purchase at any time and recover damages as provided in s. 517 211 (3) (a), (4), and (6)

Section 12. Section 517 275, Florida Statutes, is created to read:

517 275 *Commodities, prohibited practices.*—It is unlawful and a violation of this chapter for any person to engage in or from this state in any act or practice constituting a violation of any provision of the Commodity Exchange Act (7 U S C ss 1 et seq) or the rules and regulations of the Commodity Futures Trading Commission thereupon upon the effective date of this act.

Section 13. Subsection (1) of section 517 301, Florida Statutes, is amended to read:

— 517 301 *Fraudulent transactions; falsification or concealment of facts.*—It is unlawful and a violation of the provisions of this chapter for any person:

(1) In connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517 051 and including any security sold in any transaction exempted under the provisions of s. 517 061, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Section 14. Subsections (3) and (4) of section 517 311, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to said section to read

517 311 *False representations, deceptive words, enforcement* —

(3) *It is unlawful and a violation of this chapter for any person in connection with the offer or sale of any investment to obtain money or property by means of*

(a) *A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or any agency or officer thereof or by the United States or any agency or officer thereof; or*

(b) *A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or any agency or officer thereof or by the United States or any agency or officer thereof.*

Section 15. Each section which is added to chapter 517, Florida Statutes, by this act is repealed on October 1, 1990, and shall be reviewed by the Legislature pursuant to s 11 61, Florida Statutes.

Section 16. This act shall take effect upon becoming a law

Rep. Kutun moved the adoption of the amendment, which was adopted

Representative Kutun offered the following title amendment.

**Amendment 2**—On page 1, lines 1-21, strike all of said lines and insert A bill to be entitled An act relating to the Florida Securities Act, amending s 517 011, F S, redesignating the "Florida Securities Act" as the "Florida Investor Protection Act"; amending s 517 021, F S, providing and amending definitions, amending s 517 051, F S, relating to exempt securities, clarifying language and including federally chartered savings banks, amending s 517 061, F S, relating to exempt transactions, clarifying a citation, amending s. 517 12, F S, relating to registration; including provisions relating to branch offices and associated persons, requiring dealers, investment advisers and branch offices to keep certain currency transaction records and file reports with the Department of Banking and

Finance; amending s. 517.131, F.S.; renaming the Security Guaranty Fund; providing notice requirements; amending s 517 141, F S ; revising procedures for payment from the guaranty fund, deleting reference to salesmen and including associated persons; prohibiting payments before a specified period elapses; providing for multiple and joint claims, amending ss 517 151 and 517.161, F S.; correcting terminology, amending s. 517.211, F.S., relating to remedies available with respect to unlawful offers or sales of securities or investments, amending s. 517 241, F S, relating to remedies; creating s. 517 251, F S, providing for prohibited practices and remedies with respect to certain securities, investments, or boiler rooms; creating s 517 275, F S, relating to prohibited practices with respect to commodities; amending s. 517.301, F.S., relating to fraudulent transactions, amending s. 517 311, F.S., prohibiting certain false representation with respect to investments, providing for review and repeal, providing an effective date

Rep. Kutun moved the adoption of the amendment, which was adopted without objection

On motion by Rep. Silver, the rules were waived and CS/HB 797, as amended, was read the third time by title. On passage, the vote was:

Yeas—109

Abrams	Dudley	Lawson	Sanderson
Armstrong	Dunbar	Lehtinen	Sansom
Arnold	Easley	Lewis	Selph
Bailey	Evans-Jones	Liberti	Shackelford
Bankhead	Figg	Lippman	Shelley
Bass	Friedman	Locke	Silver
Brantley	Gallagher	Logan	Simon
Bronson	Gardner	Mackenzie	Simone
Brown, C.	Gordon	Martin	Smith
Brown, T. C.	Grant	Martinez	Spaet
Burke	Grindle	McEwan	Stewart
Burnsed	Hanson	Meffert	Thomas
Burrall	Hargrett	Messersmith	Thompson
Carlton	Harris	Metcalf	Titone
Carpenter	Hawkins, L. R.	Mills	Tobiasen
Casas	Hawkins, M. E.	Mitchell	Tobin
Clark	Hazouri	Morgan	Wallace
Clements	Healey	Murphy	Ward
Combee	Hill	Nergard	Watt
Cortina	Hodges	Ogden	Webster
Cosgrove	Hollingsworth	Patchett	Wenstock
Crady	Jamerson	Peeples	Wetherell
Crotty	Johnson, B. L.	Ready	Williams
Danson	Johnson, R. C.	Reynolds	Woodruff
Dantzler	Johnson, R. M.	Robinson	Young
Davis	Jones, D. L.	Rochlin	
Deutsch	Kelly	Ros	
Drage	Kutun	Sample	

Nays—None

Votes after roll call

Yeas—Reaves

So the bill passed, as amended, and was immediately certified to the Senate after engrossment

**HB 938**—A bill to be entitled An act relating to agriculture, providing for mapping and monitoring of agricultural lands, providing duties of the Department of Community Affairs, providing an effective date

—was read the second time by title On motion by Rep. C. F. Jones, the rules were waived and the bill was read the third time by title On passage, the vote was

THE FLORIDA INVESTOR PROTECTION ACT

HB 797

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TALKING POINTS FOR HOUSE COMMERCE COMMITTEE  
MEETING OF MONDAY, APRIL 16, 1984

1. THE DEPARTMENT SUPPORTS HB 797 AS A MUCH NEEDED STRENGTHENING OF THE LAWS AGAINST INVESTMENT FRAUD ORIGINATING IN OUR STATE. THE BILL FOCUSES PARTICULARLY UPON AN EXTREMELY SERIOUS PROBLEM IN FLORIDA WITH CRIMINALLY OPERATED TELEPHONE SOLICITATION COMPANIES COMMONLY KNOWN AS "BOILER ROOMS."

2. "BOILER ROOMS" ARE LOW-BUDGET, FLY-BY-NIGHT OPERATIONS THAT USE A BANK OF WATS LINES TO SWINDLE LARGE NUMBERS OF INVESTORS THROUGHOUT THE NATION. THE LIES AND HIGH PRESSURE TACTICS OF THESE BOILER ROOM THIEVES ARE UNFORTUNATELY EARNING FLORIDA AND PARTICULARLY SOUTH FLORIDA -- A REPUTATION AS THE INVESTMENT FRAUD CAPITAL OF AMERICA.

A. THIS CRIMINAL ACTIVITY GREATLY DAMAGES THE MANY LEGITIMATE FIRMS IN FLORIDA USING MODERN COMMUNICATIONS TECHNOLOGY TO TRANSACT BUSINESS IN THE WORLD MARKETPLACE AND, IN GENERAL, HARMS OUR BONA FIDE INVESTMENT INDUSTRY.

B. THE EXTENT OF THIS FRAUD IS ALMOST UNBELIEVABLE: IN THE CELEBRATED INTERNATIONAL GOLD BULLION EXCHANGE CASE LAST YEAR, INVESTORS ARE ESTIMATED TO HAVE LOST \$75 MILLION. JUST THREE OF THE DOZENS OF OIL FRAUD BOILER ROOMS WHICH HAVE OPERATED IN SOUTH FLORIDA ARE ALLEGED IN A CRIMINAL

INDICTMENT TO HAVE SWINDLED \$56 MILLION DOLLARS FROM INVESTORS IN JUST OVER TWO YEARS. FEDERAL INVESTIGATORS HAVE ESTIMATED THAT SINCE THE LATE 1970'S FLORIDA-BASED TELEPHONE INVESTMENT FRAUD HAS COST THE NATION OVER A BILLION DOLLARS.

C. THE VICTIMS HAVE COME FROM ALL WALKS OF LIFE, BUT PARTICULARLY INEXPERIENCED AND UNSOPHISTICATED PEOPLE HAVE BEEN VULNERABLE TO PROMISES OF SAFE, SURE INVESTMENTS PERSUASIVELY RECOMMENDED BY SEEMINGLY COMPETENT AND SINCERE SALES PERSONS. DON'T JUDGE THE PEOPLE WHO HAVE FALLEN FOR THESE SCHEMES UNLESS YOU'VE HEARD SUCH A SALES PITCH YOURSELF. THEN YOU MIGHT UNDERSTAND HOW A RETURNED VIETNAM POW LOST ALL OF HIS BENEFITS, OR HOW PARENTS LOST THE MONEY SAVED OVER DECADES FOR THEIR CHILDREN'S EDUCATION, OR HOW A COUPLE LOST THE SAVINGS FOR THEIR FIRST HOME, OR HOW A YOUNG DEAF WOMAN WAS PERSUADED TO PART WITH HER SOCIAL SECURITY CHECK BY A SALES PITCH TRANSLATED INTO SIGN LANGUAGE BY A FRIEND LISTENING TO A PHONE CALL FROM FLORIDA. THESE ARE ALL TRUE STORIES TO WHICH MUST BE ADDED THOSE OF COUNTLESS RETIRED PERSONS WHO HAVE LOST THEIR LIFE SAVINGS.

3. THE DEPARTMENT HAS MADE THE ERADICATION OF FRAUDULENT BOILER ROOMS A MAJOR PRIORITY. IN COOPERATION WITH LOCAL LAW ENFORCEMENT, THE FBI AND OTHER FEDERAL AGENCIES, THE DEPARTMENT HAS TAKEN THE VERY STRONGEST ACTION AUTHORIZED BY LAW AGAINST THESE COMPANIES. IN THE PAST SIX MONTHS, 77 SUCH OPERATIONS HAVE BEEN IDENTIFIED AND ORDERED TO CEASE AND DESIST.

4. HB 797 IS NEEDED TO COMBAT THIS MAJOR BLIGHT UPON FLORIDA'S LEGITIMATE INVESTMENT COMMUNITY. UNDER PRESENT LAW, TO CONSTITUTE A VIOLATION OF THE FLORIDA SECURITIES ACT, INVESTMENT FRAUD MUST INVOLVE THE OFFER OR SALE OF A "SECURITY" AS THAT TERM IS DEFINED IN SECTION 517.021(16) OF THE STATUTE.

A. OVER THE YEARS, STATE AND FEDERAL COURTS HAVE BROADLY CONSTRUED THE DEFINITION OF A SECURITY IN ORDER TO EFFECTUATE THE REMEDIAL PURPOSE OF THE SECURITIES LAWS. HOWEVER, ATTORNEYS FOR THE BOILER ROOMS ARE AWARE OF THIS BODY OF LAW AND INTENTIONALLY DESIGN ALLEGED PRODUCTS FOR THE BOILER ROOM WHICH FALL OUTSIDE THE TRADITIONAL DEFINITION.

B. IN CASES WHERE THE DEPARTMENT HAS BEEN ABLE TO CONCLUDE AS A MATTER OF LAW THAT THE BOILER ROOM HAS BEEN SELLING A SECURITY, ITS OPERATORS HAVE BEEN ABLE TO CONTINUE THEIR FRAUD BY SIMPLY MODIFYING THE ALLEGED INVESTMENT BEING OFFERED. THIS WILL DEFEAT THE DEPARTMENT'S CEASE AND DESIST ORDER UNTIL THE FRAUD CAN AGAIN BE SHOWN TO INVOLVE THE SALE OF A SECURITY.

C. ALL THE WHILE, PEOPLE CONTINUE TO LOSE MONEY AND THE RESOURCES OF THE DEPARTMENT ARE CONSUMED IN EXPENSIVE LITIGATION OVER THE LEGAL ISSUE OF WHETHER THE UNQUESTIONABLE FRAUD INVOLVED A SECURITY. OBVIOUSLY, THE PRODUCT SOLD IS IRRELEVANT TO THE CRIMINAL. OUR LAW SHOULD ACCORDINGLY BE DIRECTED, NOT TO THE PRODUCT, BUT TO THE METHOD OF OPERATION, NAMELY, THE USE OF FRAUD IN HIGH VOLUME TELEPHONE SOLICITATION OF INVESTORS.

5. THANKS TO THE CLARIFYING AMENDMENTS OFFERED IN SUBCOMMITTEE BY REP. KUTUN, THE BILL NOW CLEARLY MAKES A VIOLATION OF THE SECURITIES ACT -- TO BE RENAMED THE INVESTOR PROTECTION ACT -- BY A BOILER ROOM DEPEND UPON THE PRESENCE OF INVESTMENT-RELATED FRAUD.

A. A BOILER ROOM IS DEFINED AS A MULTI-TELEPHONE FACILITY, HOWEVER, THE ACT IS TOTALLY INAPPLICABLE TO SUCH FACILITIES UNLESS ITS OPERATORS ARE FOUND TO BE VIOLATING THE PRESENT ANTI-FRAUD PROVISIONS OF THE SECURITIES ACT.

B. THEREFORE, THE BILL HAS ABSOLUTELY NO EFFECT WHATSOEVER ON ANY TELEPHONE SOLICITOR UNLESS THAT PERSON IS COMMITTING FRAUD, AS SPECIFICALLY SET OUT IN SECTIONS 517.301 and 517.311, INVOLVING MATERIAL MISREPRESENTATIONS AND OMISSIONS IN INVESTMENT-RELATED TRANSACTIONS. THIS IS TO PROTECT ANY LEGITIMATE FIRM INVOLVED IN TELEPHONE SALES FROM UNINTENDED APPLICATION OF THE ACT.

6. TO FURTHER ASSURE THAT THE BILL ONLY ADDRESSES DEFICIENCIES IN THE PRESENT STATUTORY SCHEME, WITHOUT NEEDLESSLY EXPANDING THE DEPARTMENT'S JURISDICTION, HB 797 HAS BEEN AMENDED IN SUBCOMMITTEE TO CONFINE VIOLATIONS OF THE ACT TO TRANSACTIONS INVOLVING (1) SECURITIES (AS PRESENTLY DEFINED), (2) COMMODITIES (DEFINED TO EXCLUDE HOUSEHOLD ITEMS AND PRODUCTS SOLD BY LICENSED CHARITIES), AND (3) OTHER INVESTMENTS ONLY TO THE EXTENT THAT SUCH INVESTMENTS ARE SOLD BY FRAUD.

7. THE SPECIFIC INCLUSION OF "COMMODITIES" AMONG THE INVESTMENTS COGNIZABLE BY THE ACT IS REQUIRED BY A RECENT CHANGE IN FEDERAL LAW.

A. PRIOR TO 1982, REGULATION OF ALL TRADING IN COMMODITIES WAS RESERVED EXCLUSIVELY TO THE FEDERAL GOVERNMENT. AN UNINTENDED EFFECT OF EXCLUSIVE JURISDICTION, HOWEVER, WAS TO PERMIT MANY FRAUDULENT ENTERPRISES TO ESCAPE STATE PROSECUTION BY ASSERTING FEDERAL PREEMPTION.

B. IN 1982 CONGRESS DECLARED WHAT IT CALLED AN "OPEN SEASON ON COMMODITIES FRAUD" BY AMENDING THE FEDERAL COMMODITIES EXCHANGE ACT TO PERMIT THE CREATION OF CONCURRENT STATE AND FEDERAL JURISDICTION IN MOST COMMODITIES TRANSACTION. SUCH CONCURRENT JURISDICTION HAS ALWAYS EXISTED WITH REGARD TO SECURITIES.

C. OF COURSE, SINCE THE DEPARTMENT'S JURISDICTION HAS BEEN RESTRICTED TO SECURITIES, AS TRADITIONALLY DEFINED, NO CONCURRENT COMMODITIES JURISDICTION EXISTS UNDER PRESENT LAW. HB 797 WOULD CORRECT THIS BY CLEARLY DELINEATING THE DEPARTMENT'S JURISDICTION TO INCLUDE ONLY TRANSACTIONS DEALING WITH SECURITIES, COMMODITIES AND INVESTMENTS SOLD BY FRAUD.

8. I THANK THE COMMITTEE FOR ITS CONSIDERATION OF THIS IMPORTANT LEGISLATION AND URGE YOUR FAVORITE VOTE.



Statement of Substantial Changes Made in Substitute PCS:

This PCS defines with greater specificity the jurisdiction given to the Comptroller's Office under the Florida Investor Protection Act. It accomplishes this by:

(1) Amending the definition of "boiler room" to exclude the requirement of fraud. However, Section 5 of the bill amends the prohibited practices provisions to compensate for this exclusion. [See (6) below] [Amendment #1]

(2) The definition of "commodity" is amended to exclude goods or services used principally for personal, family, or household purposes, as well as those goods or services sold by a charitable organization licensed under chapter 496, F.S. [Amendment #2]

(3) The definition of "investment" is amended to require that an investment, in order to be covered by this act, must meet two criteria:

1. It must be directly guaranteed or represented by the offeror to produce a specified economic benefit; and,
2. Such guarantee or representation must violate either s. 517.301 [Fraudulent transactions; falsification or concealment of facts.--], or s. 517.311 [False representations; deceptive words; enforcement.--]. [Amendment #3]

(4) The definition of "'sale' or 'sell'" which was amended in the PCS to include any "item" is amended in this bill to replace that language with any "commodity or investment." [Amendment #4]

(5) All references to a "plan or program" of investment have been deleted and replaced with simply "investment." [Amendment #5]

(6) Section 5 of the PCS ["Boiler rooms; prohibited practices; remedies.--] has been amended as follows:

(a) To provide that any offer or sale of a security, commodity, or investment which violates s. 517.301 [Fraudulent transactions; falsification or concealment of facts.--], or s. 517.311 [False representations; deceptive words; enforcement.--] is prohibited -- whether sold from a boiler room or otherwise.

(b) To provide that it is unlawful for any person to directly or indirectly manage, supervise, control, or own either alone or in association with others, any boiler room which has sold or offered a security, commodity, or investment in violation of (a).

[Amendment #6]

In addition to the above, Amendment 7 technically amends the bill to correct a reference to the federal law.

# Bill Analysis



## Florida House of Representatives

H. Lee Moffat, Speaker Steve Pajcik, Speaker pro tempore  
Committee on Commerce

Samuel P. Bell, III

Chairman

Dwight W. Leibman

Vice Chairman

### STAFF SUMMARY AND ANALYSIS

PCS/HB 797 by Silver DATE: March 15, 1984  
relating to investor protection, REVISED: April 12, 1984  
boiler rooms, and commodities REVISED: \_\_\_\_\_  
Other Committees of Reference: IDENTICAL\*/SIMILAR BILLS:  
Appropriations yet to be determined  
\_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
Upon becoming a law

#### I. SUMMARY AND PURPOSE

This bill creates an act to be known as the Florida Investor Protection Act which gives the Department of Banking and Finance jurisdiction over sales or offers to sell commodities or investments when such sales or offers involve fraud; boiler room operations involving specified fraud; and acts or practices constituting a violation of the Federal Commodity Exchange Act. This new act prohibits sales in or from this state of any security, commodity, or investment involving fraud, or operation of a boiler room which sells or offers for sale any security, commodity, or investment involving fraud. Any person violating any provision of this act will be guilty of a third degree felony. Any person harmed by a sale in violation of this act is given a right to rescission and damages.

#### II. CURRENT LAW AND EFFECT OF CHANGES

##### A. CURRENT LAW

##### Securities

Chapter 517 is the Florida Securities Act. Under the act, the Department of Banking and Finance (hereafter referred to as department) has jurisdiction to proceed against persons involved in proscribed securities activities. Such proscribed activities include fraudulent transactions (s. 517.301) and false representations (s. 517.311). The department is authorized by the act to conduct investigations. If after an investigation the department believes a person has violated any provision of the act, it has three recourses as follows:

(1) Section 517.191 allows the department to investigate any complaint whenever it believes from evidence that such person is violating or about to violate the act, it may bring an action to enjoin such person or persons from continuing such fraudulent practices. The equity courts have jurisdiction over such injunction and proceedings and a judgment may be entered awarding such injunction as may be proper. The court is further given authority to impound any property or assets of the defendant.

(2) Section 517.221 allows the department to issue and serve upon a person a cease and desist order whenever the department has reason to believe that such person is violating or is about to violate any provision of the act. The cease and desist order must contain a statement of facts and a notice for a hearing which must be requested within 21 days of the cease and desist order. Under the rules of the department, the department whenever possible is to issue a notice of intent to issue a cease and desist order prior to the effectiveness of such order. However, under section 120.59(3), the department may issue an immediate final order but only upon the condition that the agency head finds an "immediate danger to the public health, safety, or welfare requires an immediate final order" and the order must "recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoined from the date rendered."

Under s. 120.68(3), the filing of a petition for review of a final order does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license supersedeas, shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon a petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state.

(3) The final recourse of the department is provided in s. 517.302, which provides criminal penalties for violations of the act. A criminal action under this section would be brought by a state attorney though the department could file a complaint with the state attorney alleging violations of the act.

#### Commodities

With respect to commodities (as defined by federal law to include everything but onions), there is no Florida law specifically regulating or governing these transactions. This is because prior to the Futures Trading Act of 1982 passed by Congress, regulation of commodities was the exclusive province of the federal government pursuant to the Commodity Exchange Act (7 U.S.C. ss. 1 et seq.). However, the Futures Trading Act of 1982 amended 7 U.S.C. s. 13a-2 to allow states to prosecute and enjoin violators of the Commodity Exchange Act.

#### Investments

There is no Florida law specifically addressing or regulating investments. However, sections 501.201-501.213, known as Florida's little FTC Act (Federal Trade Commission Act), prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Civil remedies are provided for violations.

#### Boiler Rooms

There is currently no law in Florida addressing boiler room solicitations. There are laws governing obscene or harassing phone calls (s. 365.16) and automated telephone solicitations (s. 365.165). The Department of Banking and Finance under the

Florida Securities Act (Ch. 517) only has jurisdiction to proceed against those boiler rooms involved in securities activities proscribed by the Florida Securities Act.

B. EFFECT OF PROPOSED CHANGES

This bill renames the Florida Securities Act (Chapter 517, F.S.) as the Florida Investor Protection Act, and amends Chapter 517 to expand the jurisdiction of the Department of Banking and Finance to include sales or offers to sell commodities or investments when such sales or offers to sell involve fraud; boiler room operations involving specified fraud; and violations of the Federal Commodity Exchange Act. This PCS is composed of nine sections as follows:

SECTION 1. Renames the Florida Securities Act as the Florida Investor Protection Act.

SECTION 2. Amends the definitional section of Chapter 517 to include definitions of "boiler room," "commodity," and "investment." The current definition of "sale or sell" is amended to accommodate any contract of sale or disposition of any commodity or investment, rather than just securities.

SECTION 3. Amends ss. 517.211(3)(a) and (4)(a), and (b) to include an action for rescission or damages for commodities or investment sold in violation of s. 517.301 or s. 517.311.

SECTION 4. Amends s. 517.241 (Remedies) to provide that nothing contained in Chapter 517 shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of any commodity or investment. Currently this provision only extends to securities.

SECTION 5. Creates a new section in Chapter 517 (i.e., s. 517.250) to govern prohibited practices with respect to boiler room operations, and sales or offers to sell securities, commodities or investments. Paragraph (1)(a) of this newly created section prohibits offering or selling in or from this state any security, commodity or investment in violation of s. 517.301 (Fraudulent transactions; falsification or concealment of facts.--) or s. 517.311 (False representations; deceptive words, enforcement.--). Paragraph (1)(b) prohibits managing, supervising, controlling or owning any boiler room in this state which offers for sale or sells any security, commodity or investment in violation of paragraph (1)(a). Subsection (2) provides a right of rescission and damages to any person harmed by a violation of subsection (1).

SECTION 6. Creates a new section in Chapter 517 to prohibit violations of the Federal Commodity Exchange Act. Any violation of this section constitutes a third degree felony. This provision is Florida's response to the Futures Trading Act of 1982 which allows states to prosecute and enjoin violations of the Federal Commodity Exchange Act. Prior to passage of the 1982 Act, the federal government had exclusive jurisdiction over such violations.

(The Federal Commodity Exchange Act provides in effect that all futures transactions in commodities covered by the Act must be made on an exchange designated as a contract market. The Act prohibits undesirable practices and transactions such as: price manipulation and cornering of a commodity; cheating or defrauding of customers; making false reports to customers; disseminating false crop or market information; fictitious transactions; "puts," "calls," or "privileges.")

SECTION 7. Amends s. 517.301 (Fraudulent transactions; falsification or concealment of facts.--) to cover commodities and investments. Currently the prohibitions of this section only apply to securities.

SECTION 8. Amends s. 517.311 (False representations; deceptive words; enforcement.--) to cover commodities or investments. Currently this prohibition against false representations only applies to securities.

SECTION 9. Provides that this act is effective upon becoming a law.

### III. ECONOMIC IMPACT CONSIDERATIONS

#### A. PRIVATE SECTOR CONSIDERATIONS

This bill is intended to and should serve to protect the investing public in and outside of Florida from being defrauded out of their investment funds by unscrupulous and fraudulent commodity and investment salesmen and boiler room operators. According to the Office of the Comptroller, it is impossible to quantify the extent of the fraudulent securities, commodities and investment problem in Florida, though the known losses by the public are significant. The Division of Securities of the Office of the Comptroller in 1983 took action against 46 boiler room operations unlawfully selling securities. The Commodity Futures Trading Commission has instituted lawsuits involving over 100 Florida companies. In September 1983, the U.S. Attorney for the Southern District of Florida brought suit against 24 individuals in connection with the boiler room operations of three interrelated Miami based corporations -- U.S. Oil and Gas Corp., Eagle Oil and Gas Corp., and the Stratford Co. The individuals, who were officers, directors and salesmen of these corporations, as well as a member of the Better Business Bureau of Miami, were indicted for making false and fraudulent representations and promises in connection with oil and gas lease advisory service contracts. According to the federal indictment, over a period of 40 months, the boiler room operations of these three companies bilked the investing public out of \$56 million dollars.

By explicitly delegating authority to the Department of Banking and Finance to prohibit fraudulent activities involving commodities, investments or operation of a boiler room, this legislation should reduce losses resulting from investment in fraudulent schemes since it enables the Dept. to shutdown and take action against fraudulent and unscrupulous sales of securities, commodities and investments.

#### B. PUBLIC SECTOR CONSIDERATIONS

This bill will have some economic impact in the public sector, though the impact at this time is undeterminable. This bill in essence gives the Department of Banking and Finance authority to investigate, enjoin, and take action against persons involved in or connected with fraudulent sales of commodities or investments and against persons violating provisions of the Commodity Exchange Act. Since such activity on behalf of the department may necessitate the Dept. to hire additional personnel and expend funds to carry out the duties imposed under this Act, there will be some public impact. However, at this time the Dept. has not requested any additional personnel or funds to carry out this act.

IV. COMMENTS

This bill contains two substantive sections -- one relating to sales or offers to sell any commodity or investment when such sale or offering involves fraud, or when such fraudulent sale or offering has involved operation of a boiler room; and one relating to violation of the Federal Commodity Exchange Act. The prohibition against sales or offerings of commodities or investments is necessitated by the fact that the investing public -- in and outside of Florida -- is being bilked out of millions of dollars annually by schemes involving fraudulent commodities, investments, or operation of boiler rooms, while the Department of Banking and Finance currently has no authority to take action against such schemes and operations unless they are selling securities. Frequently, the product offered for sale in such a scheme is structured specifically to avoid being classified as a security, thereby leaving the department impotent. This bill alleviates this situation and enables the department to protect innocent investors from such fraudulent schemes and operations by allowing it to take action against such schemes and operations involving fraudulent commodities or investments.

The provision in this act making a violation of the Federal Commodity Exchange Act a violation of state law resulted from passage by Congress of the Futures Trading Act of 1982 (P.L. 97-444). The Commodity Exchange Act passed by Congress in 1922 expressly preempted state regulatory law in the area of commodity exchanges. According to the legislative history, this was done in a desire for knowledgeable and uniform enforcement of the Commodity Exchange Act. A report of the Senate Committee on Governmental Affairs in 1982, however, found this fact to be largely responsible for an explosive growth of commodities fraud and recommended partial removal of federal preemption. What has come to be known as the "open season" provisions of the Futures Trading Act of 1982 are the result of that recommendation. Under the 1982 federal legislation, the anticipated role of the states in maintenance of an orderly national investment market was very much expanded. Exclusive jurisdiction of the Commodity Futures Trading Commission (CFTC) has been retained in regulation of the nation's duly constituted commodity exchanges and regulation of authorized commodity options programs and leverage contracts. But, an "open season" has been declared on commodities fraud by authorizing state officials to apply any state or federal law against persons engaged in "off-exchange" commodities trading. This removal of federal preemption permits the Florida Legislature to enact state laws which, for the first time, can be applied to commodities fraud in this state. This bill is Florida's response to the open season provision of the 1982 Act, and it is intended to confer upon the Dept. the maximum power allowed by Congress.

Statement of Substantial Changes in Committee Substitute

House Bill 797 envisions creating either a new chapter in the Florida Statutes or a new part to an existing chapter in the statutes to cover the regulation of fraudulent boiler room activities and violations of the Federal Commodity Exchange Act. In creating this new portion of the statutes, the bill repeats a great deal of the language contained in the existing Florida Securities Act (Chapter 517). Some of the language is copied verbatim, other language is amended to extend to commodities and investments. This PCS is intended to merge the substantive provisions of HB 797 into the existing Chapter 517, and rename that chapter as the Florida Investor Protection Act to accommodate its expanded scope. In accomplishing this merger, those sections of the statutes copied in HB 797 were merely amended to cover commodities and investments. The definitional section of Chapter 517 was amended to include definitions of "boiler room,"

"commodity," and "investment." In addition, the definition of "sale or sell" was amended to extend beyond securities to any commodity or investment. Section 517.241 of the current Act (which deals with Remedies) was also amended to cover commodities and investments. This section was not in HB 797. In addition to the above, the following substantive changes were made in PCS/HB 797:

1. The definition of boiler room is amended to remove the exemptions contained in HB 797 and to exclude the requirement of fraud. However, section 5 of the bill amends the prohibited practices provisions to compensate for this exclusion (see 7. below).

2. The definition of "commodity" is amended to exclude goods or services used principally for personal, family or household purposes, as well as goods or services sold by a charitable organization registered under chapter 496.

3. The definition of "investment" is amended to require that an investment, in order to be covered by this act, must meet two criteria: (1) It must be directly guaranteed or represented by the offeror to produce a specified economic benefit; and (2) Such guarantee or representation must violate either s. 517.301 or s. 517.311.

4. The definition of "telephone communication" is deleted as unnecessary.

5. All references to a "plan or program of" investment have been deleted and replaced simply with "investment."

6. The prohibited practices section of HB 797 (section 5 of that bill) was broken down into two new sections in the statutes:

(1) Section 517.250 was created to prohibit selling or offering for sale any commodity or investment when such sale or offering involved specified fraud; as well as boiler room operations involving specified fraud; and

(2) Section 517.275 was created to prohibit violations of the Federal Commodity Exchange Act.

In creating s. 517.250, the language of HB 797 was expanded as follows:

(a) To provide that any offer or sale of a security, commodity or investment which violates s. 517.301 or s. 517.311 is prohibited -- whether sold from a boiler room or otherwise;


(b) To provide that it is unlawful for any person to directly or indirectly manage, supervise, control or own either alone or in association with others, any boiler room which has sold or offered for sale any security, commodity or investment in violation of (a); and

(c) To provide that purchasers of any item sold in violation of this section are given a right to rescission and damages as currently provided in chapter 517 for purchasers of fraudulent or unregistered securities. This was not provided for in HB 797.

7. The effective date is accelerated from October 1, 1984, to the date upon which this Act becomes a law in order to allow the department to move as quickly as possible against those fraudulent schemes and operations currently existing.

#### V. AMENDMENTS

Prepared by:   
Tamara K. Nelson

Staff Director:   
Wyatt T. Martin



1	A bill to be entitled	1:btc
2	An act relating to investment solicitation;	1.1
3	creating the "Florida Investor Protection Act";	1.2
4	providing definitions; prohibiting selling or	
5	offering for sale any security commodity or	1.3
6	investment in violation of section 517.301 or	
7	517.311; prohibiting managing, supervising,	1.4
8	controlling, or owning a boiler room which	
9	offers or sells any security, commodity or	
10	investment in violation of section 517.301 or	1.5
11	517.311; prohibiting certain false	
12	representations; providing remedies; providing	1.6
13	an effective date.	
14		
15	Be It Enacted by the Legislature of the State of Florida:	1:enc
16		
17	Section 1. Section 517.011, F.S., is amended to read:	1.7
18	517.011 Short title.--This chapter shall be known and	1.8
19	may be cited as the "Florida <u>Investor Protection Securities</u>	1.9
20	Act."	
21	Section 2. Section 517.021, F.S., is amended to read;	1.10
22	<u>(5) "Boiler room" means an enterprise in which two or</u>	1.11
23	<u>more persons engage in telephone communications with members</u>	1.12
24	<u>of the public using two or more telephones at one location, or</u>	1.13
25	<u>at more than one location in a common scheme or enterprise.</u>	
26	<u>(6){5} "Broker" means dealer as herein defined.</u>	1.15
27	<u>(7) "Commodity" means all goods and articles and all</u>	1:lus
28	<u>contracts for either present or future delivery thereof,</u>	1.16
29	<u>including all commodity options, all commodity pool</u>	
30	<u>participations, all commodity-related investments, and all</u>	1.17
31	<u>services, rights, and interests in which contracts for future</u>	1.18

1/13

1	<u>delivery are dealt and all such contracts. The term</u>	1.19
2	<u>"commodity" shall not include any goods or services used</u>	
3	<u>principally for personal, family, or household purposes, or</u>	1.20
4	<u>sold by a charitable organization registered under chapter</u>	
5	<u>496.</u>	1.21
6	(8)†6‡ "Control," including the terms "controlling,"	1.23
7	"controlled by," and "under common control with," means the	
8	possession, directly or indirectly, of the power to direct or	1.25
9	cause the direction of the management or policies of a person,	1.26
10	whether through the ownership of voting securities, by	1.27
11	contract, or otherwise.	
12	(9)†7‡ "Dealer" means any person, other than a	1.29
13	salesman registered under this chapter, who engages, either	1.30
14	for all or part of his time, directly or indirectly, as broker	1.31
15	or principal in the business of offering, buying, selling, or	1.32
16	otherwise dealing or trading in securities issued by another	1.33
17	person. The term "dealer" also includes any issuer who	1.35
18	through persons directly compensated or controlled by the	1.36
19	issuer engages, either for all or part of his time, directly	1.37
20	or indirectly, in the business of offering or selling	1.38
21	securities which are issued or are proposed to be issued by	
22	said issuer. The term "dealer" does not include any licensed	1.40
23	practicing attorney who renders or performs any of said	1.41
24	services in connection with the regular practice of his	1.42
25	profession; any bank authorized to do business in this state;	1.43
26	any trust company having trust powers which it is authorized	1.45
27	to exercise in this state, which renders or performs services	
28	in a fiduciary capacity incidental to the exercise of its	1.47
29	trust powers; any wholesaler selling exclusively to dealers;	
30	any person buying and selling exclusively through a registered	1.50
31	dealer or stock exchange; or, pursuant to s. 517.061(12), any	

1	person associated with an issuer of securities if such person	1.52
2	is a bona fide employee of the issuer who has not participated	1.53
3	in the distribution or sale of any securities within the	1.54
4	preceding 12 months and who primarily performs, or is intended	1.55
5	to perform at the end of the distribution, substantial duties	1.56
6	for, or on behalf of, the issuer other than in connection with	1.57
7	transactions in securities.	1.58
8	<del>(10)</del> {8} "Department" means the Department of Banking	1:1us
9	and Finance.	1.61
10	<u>(11) "Investment" means any commitment of money or</u>	1:1us
11	<u>property in expectation of receiving a specific economic</u>	1.62
12	<u>benefit which is directly guaranteed or represented by the</u>	1.63
13	<u>offeror of the investment, when such guarantee or</u>	
14	<u>representation is in violation of s. 517.301 or s. 517.311.</u>	1.65
15	<u>The term "investment" shall not include a "business</u>	1.66
16	<u>opportunity" as defined in the Sale of Business Opportunity</u>	1.67
17	<u>Act, ss. 559.80 through 559.815 inclusive.</u>	
18	<del>(12)</del> {9} "Investment adviser" means any person who for	1.68
19	compensation engages for all or part of his time, directly,	
20	indirectly, or through publications or writings, in the	1.70
21	business of advising others as to the value of securities or	
22	as to the advisability of investments in, purchasing, or	1.72
23	selling of securities, except a dealer whose performance of	
24	these services is solely incidental to the conduct of his	1.74
25	business as a dealer and who receives no special compensation	
26	for such services. The term "investment adviser" does not	1.75
27	include any licensed practicing attorney or certified public	1.76
28	accountant who renders or performs any of said services in	1.77
29	connection with the regular practice of his profession; any	1.78
30	bank authorized to do business in this state; any bank holding	1.79
31	company as defined in the Bank Holding Company Act of 1956, as	1.80

1	amended, authorized to do business in this state; any trust	1.81
2	company having trust powers which it is authorized to exercise	1.82
3	in the state, which renders or performs services in a	1.83
4	fiduciary capacity incidental to the exercise of its trust	1.84
5	powers; any person who renders investment advice exclusively	2.1
6	to insurance or investment companies; or any person who does	2.2
7	not hold himself out to the general public as an investment	2.3
8	adviser and has no more than 15 clients within 12 consecutive	2.4
9	months in this state.	
10	<u>(13)</u> <del>(10)</del> "Issuer" means any person who proposes to	1:1us
11	issue, has issued, or shall hereafter issue any security. Any	2.9
12	person who acts as a promoter for and on behalf of a	
13	corporation, trust, or unincorporated association or	2.11
14	partnership of any kind to be formed shall be deemed an	
15	issuer.	
16	<u>(14)</u> <del>(11)</del> "Offer to sell," "offer for sale," or "offer"	2.14
17	means any attempt or offer to dispose of, or solicitation of	
18	an offer to buy, a security or interest in a security, <u>a</u>	2.15
19	<u>commodity or investment or an interest therein,</u> for value.	2.17
20	<u>(15)</u> <del>(12)</del> "Person" means a natural person, a	2.19
21	corporation created under the laws of this or any other state,	2.20
22	country, sovereignty, or political subdivision thereof, a	2.21
23	partnership, an association, a joint-stock company, a trust,	
24	or an unincorporated organization.	2.22
25	<u>(16)</u> <del>(13)</del> "Principal" means an executive officer of a	2.24
26	corporation, partner of a partnership, sole proprietor of a	
27	sole proprietorship, trustee of a trust, or any other person	2.26
28	with similar supervisory functions with respect to any	
29	organization, whether incorporated or unincorporated.	2.28
30	<u>(17)</u> <del>(14)</del> "Sale" or "sell" means any contract of sale	2.30
31	or disposition of <u>any commodity, investment, a security,</u> or	1:1os

1	interest in a security, for value. <u>With respect to securities</u>	1:lus
2	<u>or interest in a security,</u> the term defined in this subsection	2.35
3	does not include preliminary negotiations or agreements	2.36
4	between an issuer or any person on whose behalf an offering is	2.37
5	to be made and any underwriter or among underwriters who are	2.38
6	or are to be in privity of contract with an issuer. Any	2.39
7	security given or delivered with, or as a bonus on account of,	2.40
8	any purchase of securities or any other thing shall be	2.41
9	conclusively presumed to constitute a part of the subject of	
10	such purchase and to have been offered and sold for value.	2.43
11	The issue or transfer of a right or privilege, when originally	2.44
12	issued or transferred with a security, giving the holder of	2.45
13	such security the right to convert such security into another	
14	security of the same issuer or of another person or giving a	2.47
15	right to subscribe to another security of the same issuer or	2.48
16	of another person, which right cannot be exercised until some	2.49
17	future date, shall not be deemed to be an offer or sale of	2.50
18	such other security; but the issue or transfer of such other	2.51
19	security upon the exercise of such right of conversion or	
20	subscription shall be deemed a sale of such other security.	2.53
21	<u>(18)</u> <del>(15)</del> "Salesman" means any natural person, other	1:lus
22	than a dealer, employed, appointed, or authorized by a dealer	2.56
23	or issuer to sell securities in any manner or act as an	
24	investment adviser as defined in this section. The partners	2.58
25	of a partnership and the executive officers of a corporation	
26	or other association registered as a dealer are not salesmen	2.59
27	within the meaning of this definition.	
28	<u>(19)</u> <del>(16)</del> "Security" means any note, stock, treasury	2.60
29	stock, bond, debenture, evidence of indebtedness, certificate	2.61
30	of interest or participation, whiskey warehouse receipt or	2.62
31	other commodity warehouse receipt, or right to subscribe to	2.63

1	any of the foregoing; certificate of interest in a profit-	2.64
2	sharing agreement or the right to participate therein;	2.65
3	certificate of interest in an oil, gas, petroleum, mineral, or	
4	mining title or lease, or the right to participate therein;	2.67
5	collateral trust certificate, reorganization certificate,	
6	preorganization subscription, or any transferable share,	2.69
7	investment contract, or beneficial interest in title to	
8	property, profits, or earnings; interests in or under a	2.71
9	profit-sharing or participation agreement or scheme, or any	
10	other instrument commonly known as a security, including an	2.73
11	interim or temporary bond, debenture, note, certificate, or	
12	receipt for a security or for subscription to a security.	2.75
13	<u>(20)</u> <del>(17)</del> "Securities option" means any contract which	2.76
14	entitles the holder to purchase or sell a given amount of the	2.78
15	underlying security at a fixed price within a specified period	
16	of time.	
17	<u>(21)</u> <del>(18)</del> "Underwriter" means any person who has	2.79
18	purchased from an issuer or an affiliate of an issuer with a	2.80
19	view to, or offers or sells for an issuer or an affiliate of	
20	an issuer in connection with, the distribution of any	2.81
21	security, or participates or has a direct or indirect	2.82
22	participation in any such undertaking, or participates or has	2.83
23	a participation in the direct or indirect underwriting of any	2.84
24	such undertaking; provided that a person shall be presumed not	3.1
25	to be an underwriter with respect to any securities which he	3.2
26	has owned beneficially for at least 1 year; and provided,	3.3
27	further, that a dealer shall not be considered an underwriter	
28	with respect to any securities which do not represent part of	3.5
29	an unsold allotment to or subscription by the dealer as a	
30	participant in the distribution of such securities by the	3.7
31	issuer or an affiliate of the issuer; provided, further, that	

1	in the case of securities acquired on the conversion of	B.9
2	another security without payment of additional consideration,	
3	the length of time such securities have been beneficially	B.11
4	owned by a person shall include the period during which the	
5	convertible security was beneficially owned and the period	B.13
6	during which the security acquired on conversion has been	
7	beneficially owned.	
8	Section 3. Subsections (3)(a) and (4)(a) and (b) of	B.14
9	section 517.211 are amended to read:	B.15
10	(3) In an action for rescission:	B.15
11	(a) A purchaser may recover the consideration paid for	B.17
12	the security, <u>commodity, or investment</u> , plus interest thereon	
13	at the legal rate, less the amount of any income received by	B.20
14	the purchaser on the security upon tender of the security,	B.21
15	<u>commodity, or investment</u> .	B.22
16	(b) A seller may recover the security upon tender of	B.24
17	the consideration paid for the security, plus interest at the	
18	legal rate, less the amount of any income received by the	
19	defendant on the security.	B.25
20	(4) In an action for damages brought by a purchaser of	B.25
21	a security, <u>commodity, or investment</u> , the plaintiff shall	B.27
22	recover an amount equal to the difference between:	
23	(a) The consideration paid for the security,	B.28
24	<u>commodity, or investment</u> , plus interest thereon at the legal	B.29
25	rate from the date of purchase; and	
26	(b) The value of the <u>security, commodity, or</u>	B.30
27	<u>investment</u> at the time it was disposed of by the plaintiff,	B.31
28	plus the amount of any income received on the security,	B.32
29	<u>commodity, or investment</u> by the plaintiff.	B.33
30	Section 4. Section 517.241, F.S., is amended to read:	B.34
31	Note.--Repealed effective October 1, 1990, by s. 2, ch. 81-	B.35

1	318, and scheduled for review pursuant to s. 11.61 in advance	3.36
2	of that date.	
3	517.241 Remedies.--	3.37
4	(1) Any person aggrieved by a final order of the	3.38
5	department may have said order reviewed as provided by chapter	
6	120, the Administrative Procedure Act.	3.39
7	(2) Nothing in this chapter shall limit any statutory	3.39
8	or common-law right of any person to bring any action in any	3.41
9	court for any act involved in the sale of securities,	
10	<u>commodities, any investment,</u> or the right of the state to	3.42
11	punish any person for any violation of any law.	3.44
12	(3) The same civil remedies provided by laws of the	3.44
13	United States for the purchaser or seller of securities under	3.47
14	any such laws, in interstate commerce, shall extend also to	
15	purchasers or sellers of securities under this chapter.	3.49
16	(4) When not in conflict with the Constitution or laws	3.49
17	of the United States, the courts of this state have the same	3.51
18	jurisdiction over civil suits instituted in connection with	
19	the sale or offer of sale of securities under any laws of the	3.53
20	United States as they may have under similar cases instituted	
21	under the laws of the state.	3.54
22	Section 5. Section 517.250, F.S., is created to read:	3.56
23	<u>517.250 Securities, commodities, investments, boiler</u>	1:1us
24	<u>rooms; prohibited practices; remedies.--</u>	3.58
25	<u>(1) It is unlawful and a violation of this chapter for</u>	1:1us
26	<u>any person:</u>	3.59
27	<u>(a) To offer or sell in or from this state any</u>	1:1us
28	<u>security, commodity, or investment when such offer or sale is</u>	3.60
29	<u>in violation of s. 517.301 or s. 517.311; or</u>	
30	<u>(b) To directly or indirectly manage, supervise,</u>	3.61
31	<u>control, or own, either alone or in association with others,</u>	3.62



1	<u>any boiler room in this state which sells or offers for sale</u>	3.63
2	<u>any security, commodity, or investment in violation of</u>	
3	<u>paragraph (a).</u>	3.64
4	(2) <u>Any purchaser of a security, commodity, or</u>	1:lus
5	<u>investment sold in violation of subsection (1) shall be</u>	3.65
6	<u>entitled to rescind such purchase at any time and recover</u>	3.66
7	<u>damages as provided in subsections (3)(a), (4) and (6) of</u>	
8	<u>section 517.211.</u>	
9	Section 6. Section 517.275 is created to read:	3.67
10	<u>517.275 Commodities; prohibited practices.--It is</u>	3.68
11	<u>unlawful and a violation of this chapter for any person to</u>	
12	<u>engage in or from this state in any act or practice</u>	3.69
13	<u>constituting a violation of any provision of the Commodity</u>	3.70
14	<u>Exchange Act (7 USC ss. 1 et seq.) or the rules and</u>	
15	<u>regulations of the Commodity Futures Trading Commission</u>	3.71
16	<u>thereunder upon the effective date of this act.</u>	
17	Section 7. Subsection (1) of section 517.301, F.S., is	3.72
18	amended to read:	
19	517.301 <u>Fraudulent transactions; falsification or</u>	3.73
20	<u>concealment of facts.--It is unlawful and a violation of the</u>	3.74
21	<u>provisions of this chapter for any person:</u>	3.75
22	(1) In connection with the offer, sale, or purchase of	3.76
23	<u>any commodity, investment, or security, including any security</u>	
24	<u>exempted under the provisions of s. 517.051 and including any</u>	3.79
25	<u>security sold in any transaction exempted under the provisions</u>	3.80
26	<u>of s. 517.061, directly or indirectly:</u>	
27	(a) To employ any device, scheme, or artifice to	3.80
28	defraud;	
29	(b) To obtain money or property by means of any untrue	3.81
30	statement of a material fact or any omission to state a	3.83
31	material fact necessary in order to make the statements made,	3.84

1	in the light of the circumstances under which they were made,	4.1
2	not misleading; or	
3	(c) To engage in any transaction, practice, or course	4.3
4	of business which operates or would operate as a fraud or	
5	deceit upon any person.	4.4
6	(2) To publish, give publicity to, or circulate any	4.5
7	notice, circular, advertisement, newspaper, article, letter,	4.6
8	investment service, communication, or broadcast which, though	4.7
9	not purporting to offer a security for sale, describes such	4.8
10	security for a consideration received or to be received	
11	directly or indirectly from an issuer, underwriter, or dealer,	4.9
12	or from an agent or employee of an issuer, underwriter, or	4.10
13	dealer, without fully disclosing the receipt, whether past or	4.11
14	prospective, of such consideration and the amount thereof.	4.12
15	(3) In any matter within the jurisdiction of the	4.12
16	department, to knowingly and willfully falsify, conceal, or	4.13
17	cover up, by any trick, scheme, or device, a material fact,	4.14
18	make any false, fictitious, or fraudulent statement or	4.15
19	representation, or make or use any false writing or document,	
20	knowing the same to contain any false, fictitious, or	4.16
21	fraudulent statement or entry.	4.17
22	Section 8. Subsections (3) and (4) of section 517.311,	4.18
23	F.S., are renumbered as subsection (4) and (5) respectively	4.20
24	and a new subsection (3) is created to read:	
25	517.311 False representations; deceptive words;	4.21
26	enforcement.--	
27	(1) It is unlawful for any person in issuing or	4.24
28	selling any security within the state, including any security	4.25
29	exempted under the provisions of s. 517.051 and including any	4.26
30	transactions exempted under the provisions of s. 517.061, to	4.27
31	misrepresent that such security or company has been	4.28

1	guaranteed, sponsored, recommended, or approved by the state	
2	or any agency or officer thereof or the United States or any	4.29
3	agency or officer thereof.	4.30
4	(2) It is unlawful for any person registered or	4.30
5	required to be registered under any section of this chapter,	4.31
6	including such persons and issuers within the purview of ss.	4.32
7	517.051 and 517.061, to misrepresent that such person has been	4.33
8	sponsored, recommended, or approved, or that his abilities or	4.34
9	qualifications have in any respect been passed upon, by the	4.35
10	state or any agency or officer thereof or the United States or	4.36
11	any agency or officer thereof.	
12	<u>(3) It is unlawful and a violation of this chapter for</u>	4.37
13	<u>any person in connection with the offer or sale of commodities</u>	
14	<u>or any investment to obtain money or property by means of:</u>	4.38
15	<u>(a) A misrepresentation that the commodities or</u>	4.39
16	<u>investment offered or sold are guaranteed, sponsored,</u>	
17	<u>recommended, or approved by the state or any agency or officer</u>	4.40
18	<u>thereof or by the United States or any agency or officer</u>	4.41
19	<u>thereof; or</u>	
20	<u>(b) A misrepresentation that such person is sponsored,</u>	4.42
21	<u>recommended, or approved, or that such person's abilities or</u>	
22	<u>qualifications have in any respect been passed upon, by the</u>	4.43
23	<u>state or any agency or officer thereof or by the United States</u>	
24	<u>or any agency or officer thereof.</u>	4.44
25	<del>(4)</del> (3) No provision of subsection (1) or subsection	4.45
26	(2) shall be construed to prohibit a statement that a person	4.47
27	or security is registered under this chapter if such statement	
28	of registration is required by the provisions of this chapter	4.48
29	or rules promulgated thereunder, if such statement is true in	4.49
30	fact, and if the effect of such statement of registration is	4.50
31	not misrepresented.	4.51

1	<u>(5)</u> <del>(4)</del> This section may be enforced only by the	4.52
2	department in an action or proceeding brought under s. 517.191	4.54
3	or s. 517.221. for review pursuant to s. 11.61 in advance of	4.55
4	that date.	
5	Section 9. This act shall take effect upon becoming a	4.56
6	law.	
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By Representative Silver

A bill to be entitled

An act relating to investment solicitation;  
 creating the "Florida Investor Protection Act";  
 prohibiting the boiler room method of  
 soliciting investments from the public by  
 telephone; providing for the adoption of rules  
 by the Department of Banking and Finance;  
 prohibiting certain false representations;  
 providing for issuance of cease and desist  
 orders; providing for administrative fines;  
 providing for injunctive relief; providing for  
 restitution; providing for investigations;  
 providing for burden of proof; providing a  
 penalty; providing an effective date.

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

Section 1. Short title.--This chapter shall be known  
 and may be cited as the "Florida Investor Protection Act."

Section 2. Legislative intent.--

(1) It is recognized by the Legislature that the  
 investing public nationwide has lost millions of dollars to  
 fraudulent "boiler room" operations soliciting investments  
 from the public by telephone. As a result of the diversion of  
 investment funds to boiler rooms, whose operators generally  
 are not registered with state and federal regulators, are not  
 members of and supervised by self-regulatory organizations,  
 and are frequently undercapitalized, the legitimate securities  
 and commodities industry in this state has been harmed,  
 impeding accumulation of risk capital for economic expansion.

This public document was promul-  
 gated at an average cost of 1.6 cents per  
 single page for the information of  
 members of the Legislature and the public.

1	It is, therefore, the intention of the Legislature that the	1.18
2	boiler room method of operation be illegal.	1.19
3	(2) With enactment of the Futures Trading Act of 1982	1.20
4	by the Congress of the United States, the states' role to	1.21
5	ensure orderly trading of commodities and related investments	
6	has been greatly expanded. It is declared the intent of the	1.23
7	Legislature that powers conferred upon the states in the	
8	Commodities Exchange Act are adopted by this chapter to the	1.24
9	fullest extent provided by law for the protection of investors	1.25
10	transacting business in this state.	
11	Section 3. Definitions.--When used in this act the	1.26
12	following terms shall have the following respective meanings:	1.27
13	(1) "Boiler room" means an enterprise in which two or	1.28
14	more persons engage in telephone communications with members	
15	of the public using two or more telephones at one location, or	1.29
16	at more than one location, in a common scheme or enterprise,	
17	when such telephone communications operate or would operate as	1.31
18	a fraud or deceit upon any client or participant or	1.3
19	prospective client or participant, unless:	
20	(a) Such persons are registered with the department as	1.33
21	a dealer, associated person, or investment adviser pursuant to	1.34
22	chapter 517, Florida Statutes; or	
23	(b) Such persons are members or are employed by a	1.35
24	member or are employed by an affiliate of a member or are	1.36
25	employed by a member firm or by an affiliate of a member firm	
26	of any commodities exchange designated as a contract market by	1.37
27	the Commodity Futures Trading Commission or by the National	1.38
28	Futures Association, Inc.; or	
29	(c) Such persons are, or are employed by, a charitable	1.39
30	organization as defined in chapter 496, Florida Statutes, a	1.41
31	financial institution as defined in chapter 655, Florida	

1	Statutes, or an insurer as defined in chapter 624, Florida	1.41
2	Statutes.	
3	(2) "Commodity" includes all goods and articles and	1.42
4	all contracts for either present or future delivery thereof,	1.44
5	all commodity options, all commodity pool participations, all	
6	commodity-related investments, and all services, rights, and	1.45
7	interests in which contracts for future delivery are dealt,	1.47
8	and all such contracts.	
9	(3) "Department" means the Department of Banking and	1.48
10	Finance.	1.49
11	(4) "Investment" includes all commitments of money or	1.49
12	property in expectation of economic benefit. As used in this	1.51
13	chapter, the term "investment" shall not include a "business	
14	opportunity" as defined in the Sale of Business Opportunities	1.52
15	Act, ss. 559.80-559.815, Florida Statutes.	1.53
16	(5) "Offer" means any attempt or offer to dispose of,	1.54
17	or solicitation of an offer to buy, any item for value.	1.55
18	(6) "Sale" or "sell" means any contract of sale or	1.56
19	disposition of any item for value.	1.57
20	(7) "Security" shall have the meaning ascribed to it	1.58
21	in chapter 517, Florida Statutes. As used in this act, the	1.60
22	term "security" shall include securities exempted from	
23	registration under the provisions of s. 517.051 or s. 517.061,	1.61
24	Florida Statutes.	
25	(8) "Telephone communication" includes all telephone	1.62
26	conversations regardless of point of origination or mode of	1.63
27	transmission.	
28	Section 4. Power of department to make rules.--The	1.64
29	department shall administer and provide for the enforcement of	1.65
30	all the provisions of this act. The department shall make,	1.66
31	adopt, promulgate, amend, and repeal all rules necessary or	

1	convenient for the carrying out of the duties, obligations,	1.67
2	and powers conferred on said department and perform any other	1.69
3	acts necessary or convenient for the proper administration,	
4	enforcement, or interpretation of this act. The department	1.73
5	shall also have the power to define by rule any term, whether	
6	or not used in this chapter, insofar as the definition is not	1.74
7	inconsistent with the provisions of this act.	
8	Section 5. Prohibited practices.--It is unlawful and a	1.75
9	violation of this act for:	1.76
10	(1) Any person to offer or sell in or from this state	1.76
11	any security, any commodity, or any plan or program of	1.77
12	investment by telephone communications from a boiler room.	
13	(2) Any person to offer or sell any security, any	1.78
14	commodity, or any plan or program of investment by operation	1.79
15	of a boiler room in this state.	
16	(3) Any person to engage in or from this state in any	1.80
17	act or practice constituting a violation of any provision of	1.81
18	the Commodity Exchange Act or the rules and regulations of the	
19	Commodity Futures Trading Commission thereunder.	1.82
20	Section 6. False representations.--It is unlawful and	1.83
21	a violation of this act for any person, in connection with the	1.84
22	offer or sale of commodities or any plan or program of	
23	investment, to obtain money or property by means of:	2.1
24	(1) A misrepresentation that the commodities or plan	2.2
25	or program of investment offered or sold are guaranteed,	2.3
26	sponsored, recommended, or approved by the state or any agency	
27	or officer thereof or by the United States or any agency or	2.4
28	officer thereof.	
29	(2) A misrepresentation that such person is sponsored,	2.5
30	recommended, or approved, or that such person's abilities or	2.6
31	qualifications have in any respect been passed upon, by the	



1	state or any agency or officer there of by the United States	2.7
2	or any agency or officer thereof.	
3	(3) Any untrue statement of a material fact or any	2.8
4	omission to state a material fact necessary in order to make	2.9
5	the statements made, in the light of the circumstances under	
6	which they were made, not misleading.	2.10
7	Section 7. Cease and desist orders; administrative	2.11
8	fines.--	
9	(1) The department may issue and serve upon a person a	2.12
10	cease and desist order whenever the department finds that such	2.13
11	person is violating, has violated, or is about to violate any	
12	provision of this act, any rule promulgated or order entered	2.15
13	by the department hereunder, or any written agreement entered	2.16
14	into by or on behalf of such person with the department.	
15	Cease and desist orders under this section shall be issued in	2.17
16	accordance with the Administrative Procedure Act.	2.18
17	(2) The department may impose an administrative fine	2.19
18	not to exceed \$1,000 against any person found to have violated	2.20
19	any cease and desist order of the department. All fines	2.21
20	collected under this section shall be paid into the State	
21	Treasury and credited to the General Revenue Fund.	2.22
22	Section 8. Injunction to restrain violations.--	2.23
23	(1) When it shall appear to the department, either	2.24
24	upon complaint or otherwise, that a person has engaged or is	
25	about to engage in any act or practice constituting a	2.25
26	violation of this act or a rule or order hereunder, the	2.26
27	department may investigate; and whenever it shall believe from	2.27
28	evidence satisfactory to it that any such person has engaged,	2.28
29	is engaged, or is about to engage, in any act or practice	
30	constituting a violation of this act or a rule or order	2.29
31	hereunder, the department may, in addition to any other	

1	remedies, bring action in the name and on behalf of the state	2.30
2	against such person and any other person concerned in or in	2.31
3	any way participating in or about to participate in such	
4	practices or engaging therein or doing any act or acts in	2.3
5	furtherance thereof or in violation of this chapter to enjoin	2.34
6	such person or persons from continuing such practices or	2.35
7	engaging therein or doing any act or acts in furtherance	
8	thereof or in violation of this act. In any such court	2.36
9	proceedings, the department may apply for, and on due showing	
10	be entitled to have issued, the court's subpoena requiring	2.37
11	forthwith the appearance of any defendant and his employees,	2.38
12	salesmen, or agents, and the production of documents, books,	
13	and records that may appear necessary for the hearing of such	2.39
14	petition, to testify or give evidence concerning the acts or	
15	conduct or things complained of in such application for	2.40
16	injunction. In such action, the court shall have jurisdiction	2.41
17	of the subject matter, and a judgment may be entered awarding	2.4
18	such injunction as may be proper.	
19	(2) In addition to all other means provided by law for	2.43
20	the enforcement of any temporary restraining order,	2.44
21	preliminary injunction, or permanent injunction issued in any	
22	such court proceedings, the court shall have the power and	2.45
23	jurisdiction, upon application of the department, to impound	2.47
24	and to appoint a receiver or administrator for the property,	
25	assets, and business of the defendant, including, but not	2.48
26	limited to, the books, records, documents, and papers	2.50
27	appertaining thereto. Such receiver or administrator, when	2.51
28	appointed and qualified, shall have all powers and duties as	
29	to custody, collection, administration, winding up, and	2.53
30	liquidation of said property and business as shall from time	2.5.
31	to time be conferred upon him by the court. In any such	2.55

1 action, the court may issue orders and decrees staying all  
 2 pending suits and enjoining any further suits affecting the  
 3 receiver's or administrator's custody or possession of the  
 4 said property, assets, and business or, in its discretion,  
 5 may, with the consent of the presiding judge of the circuit,  
 6 require that all such suits be assigned to the circuit court  
 7 judge appointing the said receiver or administrator.

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

18 Section 9. Investigations by the department.--

19 (1) The department may make investigations, within or  
 20 outside this state, when necessary to determine whether a  
 21 person has violated or is about to violate any provision of  
 22 this act or of any rule or order hereunder.

23 (2) (a) In the course of or in connection with an  
 24 investigation by the department pursuant to the provisions of  
 25 subsection (1) the department shall have the power through  
 26 such persons designated in the department's order:

- 27 1. To administer oaths and affirmations;
- 28 2. To take or cause to be taken testimony and  
 29 depositions; and
- 30 3. To issue, revoke, quash, or modify subpoenas and  
 31 subpoenas duces tecum under the seal of the department or to

1	cause any such subpoena or subpoena duces tecum to be issued	2.80
2	by any county court judge or clerk of the circuit court or	
3	county court to require persons to be or appear before the	2.81
4	department at a time and place to be therein named and to	
5	bring such books, records, and documents for inspection as may	2.82
6	be therein designated. Such subpoenas may be served by a	2.83
7	representative of the department expressly authorized in	
8	writing by the department for such purpose, or may be served	2.84
9	as otherwise provided for by law for the service of subpoenas.	3.1
10	(b) In connection with any such investigation, the	3.2
11	department may permit a person to file a statement in writing,	3.3
12	under oath or otherwise as the department determines, as to	
13	facts and circumstances specified by the department.	3.4
14	(3) (a) In the event of substantial noncompliance with	3.5
15	a subpoena issued or caused to be issued by the department	3.6
16	pursuant to this section, the department may petition the	
17	circuit court of the county in which the person subpoenaed	3.7
18	resides or has his principal place of business for an order	3.8
19	requiring the subpoenaed person to appear and testify and to	
20	produce such books, records, and documents as are specified in	3.9
21	such subpoena duces tecum. The department is entitled to the	3.10
22	summary procedure provided in s. 51.011, Florida Statutes, and	
23	the court shall advance the cause on its calendar.	3.11
24	(b) A copy of the petition shall be served upon the	3.12
25	person subpoenaed by any person authorized by this section to	3.13
26	serve subpoenas, who shall make and file with the court an	
27	affidavit showing the time, place, and date of service.	3.14
28	(c) Failure to comply with an order granting, in whole	3.15
29	or in part, a petition for enforcement of a subpoena shall be	3.16
30	a contempt of court.	
31		

1	(4) Witnesses shall be entitled to the same fees and	3.1
2	mileage to which they may be entitled by law for attending as	3.1
3	witnesses in the circuit court, except where such examination	
4	or investigation is held at the place of business or residence	3.2
5	of the witness.	

6	(5) The material compiled by the department in an	3.2
7	investigation under this chapter is confidential until the	3.2
8	investigation is complete. The material compiled by the	3.2
9	department in an investigation under this chapter remains	
10	confidential after the department's investigation is complete	3.2
11	if the department has submitted the material or any part of it	3.2
12	to any law enforcement agency and that agency has not	
13	completed its investigation or prosecution.	3.2

14	Section 10. Burden of proof.--In any complaint,	3.2
15	information, indictment, writ, or proceeding brought under	3.3
16	this act it shall not be necessary to negate any exemption as	
17	may be provided in this act. The burden of proof to establish	3.3
18	the right to an exemption provided by this act shall be upon	
19	the party claiming the benefit of such exemption.	3.3

20	Section 11. Penalty.--Whoever violates any of the	3.3
21	provisions of this act is guilty of a felony of the third	3.3
22	degree, punishable as provided in s. 775.082, s. 775.083, or	
23	s. 775.084, Florida Statutes. The statute of limitations for	3.3
24	prosecution of offenses committed under this act shall be 5	3.3
25	years.	

26	Section 12. This act shall take effect October 1,	3.3
27	1984.	

HOUSE SUMMARY

28	Creates the "Florida Investor Protection Act," which,	
29	generally, prohibits the "boiler room" method of	
30	soliciting investments from the public by telephone.	
31	Provides for administration and enforcement by the	
	Department of Banking and Finance. Provides for cease	
	and desist orders, civil and criminal penalties,	
	injunctive relief, and restitution.	

# Bill Analysis

4-16-84  
Went to full



## Florida House of Representatives

H. Lee Moffitt, Speaker Steve Pajole, Speaker pro tempore  
Committee on Commerce

Samuel P. Bell, III  
Chairman

Dexter W. Lehtinen  
Vice Chairman

### STAFF SUMMARY AND ANALYSIS

HB 797 by Silver DATE: March 14, 1984  
relating to boiler rooms REVISED: \_\_\_\_\_  
and commodities REVISED: \_\_\_\_\_  
Other Committees of Reference: IDENTICAL\*/SIMILAR BILLS:  
Appropriations yet to be determined  
\_\_\_\_\_ EFFECTIVE DATE: \_\_\_\_\_  
\_\_\_\_\_ October 1, 1984

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#### I. SUMMARY AND PURPOSE

This bill creates an act to be known as the Florida Investor Protection Act which gives the Department of Banking and Finance jurisdiction over boiler room activities and acts or practices constituting a violation of the Federal Commodity Exchange Act. This new Act prohibits sales in or from this state of any security, commodity, or plan or program of investment from a boiler room or by operation of a boiler room. Any person violating any provision of this Act will be guilty of a third degree felony.

#### II. CURRENT LAW AND EFFECT OF CHANGES

##### A. CURRENT LAW

There is currently no law in Florida addressing boiler room solicitations. We do have laws governing obscene or harassing phone calls (s. 365.16); automated telephone solicitations (s. 365.165); fraudulent practices (Chapter 817); and with respect to securities, laws prohibiting fraudulent transactions (s. 517.301) and false representations (s. 517.311). The Department of Banking and Finance (hereafter referred to as "Dept.") under the Florida Securities Act (Chapter 517) only has jurisdiction to proceed against those boiler rooms involved in securities activities proscribed by the Florida Securities Act. In those instances when the Dept. has jurisdiction, it is authorized by the Act to revoke, deny or suspend registration of dealers of securities (assuming they are lawfully registered); conduct investigations; enjoin violators; and, issue cease and desist orders.

With respect to commodities, there is no Florida law specifically regulating or governing these transactions. This is because prior to the Futures Trading Act of 1982 passed by Congress, regulation of commodities was the exclusive province of the federal government pursuant to the Commodity Exchange Act (7 U.S.C. ss. 1 et seq.). However, the Futures Trading Act of 1982 amended 7 U.S.C. s. 13a-2 to allow states to prosecute and enjoin violators of the Commodity Exchange Act.

B. EFFECT OF PROPOSED CHANGES

This bill creates an act known as the Florida Investor Protection Act which gives the Department of Banking and Finance jurisdiction over boiler room activities and acts or practices which constitute a violation of the Commodity Exchange Act.

The bill defines "boiler room" as a fraudulent enterprise involving telephone communications unless the persons engaging in such enterprise are: (1) registered with the Dept. pursuant to the Florida Securities Act; (2) connected in specified fashion to a contract market designated by the Commodity Futures Trading Commission or by the National Futures Association, Inc.; or (3) a charitable organization (as defined in Chapter 496, F.S.), a financial institution (as defined in Chapter 655, F.S.), an insurer (as defined in Chapter 624, F.S.), or an employee of any of the above.

The Act also defines "commodity," "Department," "investment," "offer," "sale or sell," "security," and "telephone communication." It prohibits: sales in or from this state of any security, commodity, or any plan or program of investment from a boiler room or by operation of a boiler room; any act or practice violating the Commodity Exchange Act; and, false representations in connection with the offer or sale of commodities or any plan or program of investment.

The provisions in the prohibited practices section of the bill (Section 5) relating to Commodity Exchange Act violations, is Florida's response to the Futures Trading Act of 1982 which allows states to prosecute and enjoin violations of the Commodity Exchange Act. Prior to passage of the 1982 Act, the federal government had exclusive jurisdiction over such violations.

The Commodity Exchange Act provides in effect that all futures transactions in commodities covered by the Act must be made on an exchange designated as a contract market. The Act prohibits undesirable practices and transactions such as: price manipulation and cornering of a commodity; cheating or defrauding of customers; making false reports to customers; disseminating false crop or market information; fictitious transactions; and "puts," "calls," or "privileges."

The Dept. is authorized to make rules necessary to administer the Act; issue cease and desist orders; enjoin violations of the Act; and, conduct investigations. (The Dept. currently has all of these powers under the Florida Securities Act but only with respect to securities. See ss. 517.03, 517.221, 517.191, and 517.201, respectively.)

In addition, the Act provides that the burden of proof on the issue of the right to any exemption provided by the Act shall be upon the party claiming the benefit of such exemption.

Violators of any provision of the Act are guilty of a third degree felony, subject to a five (5) year statute of limitation.

### III. ECONOMIC IMPACT CONSIDERATIONS

#### A. PRIVATE SECTOR CONSIDERATIONS

This bill is intended to and should serve to protect the investing public in and outside of Florida from being defrauded out of their investment funds by unscrupulous and fraudulent boiler room salesmen and operators. According to the Office of the Comptroller, it is impossible to quantify the extent of the boiler room problem in Florida, though the known losses by the public are significant. The Division of Securities of the Office of the Comptroller in 1983 took action against 46 boiler room operations unlawfully selling securities. The Commodity Futures Trading Commission has instituted lawsuits involving over 100 Florida companies. In September 1983, the U.S. Attorney for the Southern District of Florida brought suit against 24 individuals in connection with the boiler room operations of three interrelated Miami based corporations -- U.S. Oil and Gas Corp., Eagle Oil and Gas Corp., and the Stratford Co. The individuals, who were officers, directors and salesmen of these corporations, as well as a member of the Better Business Bureau of Miami, were indicted for making false and fraudulent representations and promises in connection with oil and gas lease advisory service contracts. According to the federal indictment, over a period of 40 months, the boiler room operations of these three companies bilked the investing public out of \$56 million dollars.

By explicitly delegating authority to the Department of Banking and Finance to prohibit fraudulent boiler room activities, this legislation should reduce losses resulting from investment in fraudulent schemes since it enables the Dept. to shutdown and take action against fraudulent and unscrupulous boiler room operations.

#### B. PUBLIC SECTOR CONSIDERATIONS

This bill will have some economic impact in the public sector, though the impact at this time is undeterminable. This bill in essence gives the Department of Banking and Finance authority to investigate, enjoin, and take action against persons involved in boiler room operations and against persons violating provisions of the Commodity Exchange Act. Since such activity on behalf of the Dept. may necessitate the Dept. to hire additional personnel and expend funds to carry out the duties imposed under this Act, there will be some public impact. However, at this time the Dept. has not requested any additional personnel or funds to carry out this Act.

### IV. COMMENTS

This bill contains two substantive sections -- one relating to boiler room operations, and one relating to commodities. The prohibition against boiler room operations is necessitated by the fact that unscrupulous boiler rooms are bilking the investing public -- in and outside of Florida -- out of millions of dollars annually, and the Department of Banking and Finance currently has no authority to take action against such operations unless they are selling securities. Frequently, the product offered for sale by a boiler room is structured specifically to avoid being classified as a security, thereby leaving the Dept. impotent. This bill alleviates this situation and enables the Dept. to protect innocent investors from such fraudulent operations by allowing it to take action against such operations, regardless of what product or scheme they sell.



The provision in this Act making a violation of the Federal Commodity Exchange Act a violation of state law resulted from passage by Congress of the Futures Trading Act of 1982 (P.L. 97-444). The Commodity Exchange Act passed by Congress in 1922 expressly preempted state regulatory law in the area of commodity exchanges. According to the legislative history, this was done in a desire for knowledgeable and uniform enforcement of the Commodity Exchange Act. A report of the Senate Committee on Governmental Affairs in 1982, however, found this fact to be largely responsible for an explosive growth of commodities fraud and recommended partial removal of federal preemption. What has come to be known as the "open season" provisions of the Futures Trading Act of 1982 are the result of that recommendation. Under the 1982 federal legislation, the anticipated role of the states in maintenance of an orderly national investment market was very much expanded. Exclusive jurisdiction of the Commodity Futures Trading Commission (CFTC) has been retained in regulation of the nation's duly constituted commodity exchanges and regulation of authorized commodity options programs and leverage contracts. But, an "open season" has been declared on commodities fraud by authorizing state officials to apply any state or federal law against persons engaged in "off-exchange" commodities trading. This removal of federal preemption permits the Florida Legislature to enact state laws which, for the first time, can be applied to commodities fraud in this state. This bill is Florida's response to the open season provision of the 1982 Act, and it is intended to confer upon the Dept. the maximum power allowed by Congress.

Since this bill copies several provisions (some verbatim) of the Florida Securities Act, rather than creating a new chapter in the statutes as this bill contemplates, it may be advisable to simply merge the new substantive provisions of this Act relating to boiler rooms and commodities into the existing Securities Act (Chapter 517) and rename Chapter 517 the "Florida Investor Protection Act." This merger could be accomplished with minimal alteration of the existing Act. The attached PCS/HB 797 accomplishes this merger.

V. AMENDMENTS

Prepared by:

  
Tamara K. Nelson

Staff Director:

  
Wyatt T. Martin

6	<del>under the same circumstances under which they were made,</del>	4.54
7	not misleading; or	
8	(c) To engage in any transaction, practice, or course	4.56
9	of business which operates or would operate as a fraud or	
10	deceit upon any person.	4.57
11	Section 8. Subsections (3) and (4) of section 517.311,	4.58
12	Florida Statutes, are renumbered as subsections (4) and (5),	4.60
13	respectively, and a new subsection (3) is added to said	
14	section to read:	4.61
15	517.311 False representations; deceptive words;	4.62
16	enforcement.--	
17	<u>(3) It is unlawful and a violation of this chapter for</u>	1:lus
18	<u>any person in connection with the offer or sale of any</u>	4.64
19	<u>investment to obtain money or property by means of:</u>	4.65
20	<u>(a) A misrepresentation that the investment offered or</u>	1:lus
21	<u>sold is guaranteed, sponsored, recommended, or approved by the</u>	4.66
22	<u>state or any agency or officer thereof or by the United States</u>	4.67
23	<u>or any agency or officer thereof; or</u>	4.68
24	<u>(b) A misrepresentation that such person is sponsored,</u>	1:lus
25	<u>recommended, or approved, or that such person's abilities or</u>	4.69
26	<u>qualifications have in any respect been passed upon, by the</u>	4.70
27	<u>state or any agency or officer thereof or by the United States</u>	
28	<u>or any agency or officer thereof.</u>	4.71
29	Section 9. Each section which is added to chapter 517,	4.72
30	Florida Statutes, by this act is repealed on October 1, 1990,	4.73
31		

NOTING: Words stricken are deletions; words underlined are additions.

By Committee on Commerce and Representative Silver

This public document was promulgated at an average cost of 1.6 cents per single page for the information of members of the Legislature and the public.

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A bill to be entitled  
An act relating to investment solicitation;  
amending s. 517.011, F.S., redesignating the  
"Florida Securities Act" as the "Florida  
Investor Protection Act"; amending s. 517.021,  
F.S., providing definitions; amending s.  
517.211, F.S., relating to remedies available  
with respect to unlawful offers or sales of  
securities or investments; amending s. 517.241,  
F.S., relating to remedies; creating s.  
517.251, F.S., providing for prohibited  
practices and remedies with respect to certain  
securities, investments, or boiler rooms;  
creating s. 517.275, F.S., relating to  
prohibited practices with respect to  
commodities; amending s. 517.301, F.S.,  
relating to fraudulent transactions; amending  
s. 517.311, F.S., prohibiting certain false  
representation with respect to investments;  
providing for review and repeal; providing an  
effective date.

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

Section 1. Section 517.011, Florida Statutes, is amended to read:

517.011 Short title.--This chapter may be cited as the "Florida Investor Protection Securities Act."

Section 2. Section 517.021, Florida Statutes, is amended to read:

By Committee on Commerce and Representative Silver

This public document was promulgated at an average cost of 1.6 cents per single page for the information of members of the Legislature and the public.

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effective date.

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

Section 1. Section 517.011, Florida Statutes, is amended to read:

517.011 Short title.--This chapter may be cited as the "Florida Investor Protection Securities Act."

Section 2. Section 517.021, Florida Statutes, is amended to read:

1	517.021 Definitions.--When used in this chapter,	1.17
2	unless the context otherwise indicates, the following terms	1.20
3	shall have the following respective meanings:	1.22
4	(1) "Accredited investor" means any person who comes	1.23
5	within any of the following categories, or who an issuer	1.24
6	reasonably believes comes within any of the following	
7	categories, at the time of the sale of the securities to that	1.25
8	person:	
9	(a) Any bank as defined in s. 3(a)(2) of the	1.27
10	Securities Act of 1933, 15 U.S.C. s. 77c(a)(2), whether acting	1.28
11	in its individual or fiduciary capacity or any insurance	1.29
12	company as defined in s. 2(13) of that act; any investment	
13	company registered under the Investment Company Act of 1940 or	1.31
14	a business development company as defined in s. 2(a)(48) of	1.33
15	that act; any small business investment company licensed by	
16	the United States Small Business Administration under s.	1.34
17	301(c) or (d) of the Small Business Investment Act of 1958; or	
18	any employee benefit plan within the meaning of Title I of the	1.36
19	Employee Retirement Income Security Act of 1974, if the	1.37
20	investment decision is made by a plan fiduciary, as defined in	
21	s. 3(21) of such act, which is either a bank, insurance	1.38
22	company, or registered investment adviser or if the employee	
23	benefit plan has total assets in excess of \$5 million.	1.39
24	(b) Any private business development company as	1.40
25	defined in s. 202(a)(22) of the Investment Advisers Act of	
26	1940.	1.41
27	(c) Any organization described in s. 501(c)(3) of the	1.41
28	Internal Revenue Code with total assets in excess of \$5	1.43
29	million.	
30	(d) Any director, executive officer, or general	1.44
31	partner of the issuer of the securities being offered or sold	1.45

1	or any director, executive officer, or general partner of a	1.46
2	general partner of that issuer.	
3	(e) Any person who purchases at least \$150,000 worth	1.48
4	of the securities being offered, when the price of the	
5	purchaser's total purchase does not exceed 20 percent of the	1.50
6	purchaser's net worth at the time of sale, or joint net worth	
7	with that person's spouse, for one or any combination of the	1.52
8	following:	
9	1. Cash.	1.52
10	2. Securities for which market quotations are readily	1.54
11	available.	1.55
12	3. An unconditional obligation to pay cash or	1.56
13	securities for which market quotations are readily available,	1.58
14	which obligation is to be discharged within 5 years of the	
15	sale of the securities to the purchaser.	1.59
16	4. The cancellation of any indebtedness owed by the	1.61
17	issuer to the purchaser.	1.62
18	(f) Any natural person whose individual net worth, or	1.62
19	joint net worth with that person's spouse, at the time of his	1.64
20	purchase exceeds \$1 million.	1.65
21	(g) Any natural person who had an individual income in	1.65
22	excess of \$200,000 in each of the 2 most recent years and who	1.67
23	reasonably expects an income in excess of \$200,000 in the	
24	current year.	1.68
25	(h) Any entity in which all of the equity owners are	1.68
26	accredited investors under paragraph (a), paragraph (b),	1.69
27	paragraph (c), paragraph (d), paragraph (f), or paragraph (g).	1.70
28	(2) "Affiliate" means a person that directly, or	1.71
29	indirectly through one or more intermediaries, controls, is	1.73
30	controlled by, or is under common control with an applicant or	
31	registrant.	

1	(3) "Agent" means salesman as herein defined.	1.75
2	(4) "Associated person" means any partner, officer,	1.75
3	director, or branch manager of a dealer or investment adviser	1.77
4	or any person occupying a similar status or performing similar	
5	functions or any natural person directly or indirectly	1.79
6	controlling or controlled by such dealer or investment	
7	adviser, other than an employee whose function is only	1.80
8	clerical or ministerial.	1.81
9	<u>(5) "Boiler room" means an enterprise in which two or</u>	1:lus
10	<u>more persons engage in telephone communications with members</u>	1.82
11	<u>of the public using two or more telephones at one location, or</u>	1.83
12	<u>at more than one location in a common scheme or enterprise.</u>	1.84
13	<del>(6)</del> (5) "Broker" means dealer as herein defined.	2.1
14	<del>(7)</del> (6) "Control," including the terms "controlling,"	2.3
15	"controlled by," and "under common control with," means the	
16	possession, directly or indirectly, of the power to direct or	2.5
17	cause the direction of the management or policies of a person,	2.6
18	whether through the ownership of voting securities, by	2.7
19	contract, or otherwise.	
20	<del>(8)</del> (7) "Dealer" means any person, other than a	2.9
21	salesman registered under this chapter, who engages, either	2.10
22	for all or part of his time, directly or indirectly, as broker	2.11
23	or principal in the business of offering, buying, selling, or	2.12
24	otherwise dealing or trading in securities issued by another	2.13
25	person. The term "dealer" also includes any issuer who	2.15
26	through persons directly compensated or controlled by the	2.16
27	issuer engages, either for all or part of his time, directly	2.17
28	or indirectly, in the business of offering or selling	2.18
29	securities which are issued or are proposed to be issued by	
30	said issuer. The term "dealer" does not include any licensed	2.20
31	practicing attorney who renders or performs any of said	2.21

1	services in connection with the regular practice of his	2.22
2	profession; any bank authorized to do business in this state;	2.23
3	any trust company having trust powers which it is authorized	2.25
4	to exercise in this state, which renders or performs services	
5	in a fiduciary capacity incidental to the exercise of its	2.27
6	trust powers; any wholesaler selling exclusively to dealers;	
7	any person buying and selling exclusively through a registered	2.30
8	dealer or stock exchange; or, pursuant to s. 517.061(12), any	
9	person associated with an issuer of securities if such person	2.32
10	is a bona fide employee of the issuer who has not participated	2.33
11	in the distribution or sale of any securities within the	2.34
12	preceding 12 months and who primarily performs, or is intended	2.35
13	to perform at the end of the distribution, substantial duties	2.36
14	for, or on behalf of, the issuer other than in connection with	2.37
15	transactions in securities.	2.38
16	<u>(9)†</u> "Department" means the Department of Banking	2.39
17	and Finance.	2.40
18	<u>(10) "Investment" means any commitment of money or</u>	1:lus
19	<u>property, not otherwise a security as defined in this chapter,</u>	2.41
20	<u>in expectation of receiving an economic benefit offered or</u>	2.42
21	<u>sold in violation of s. 517.301 or s. 517.311, except that the</u>	
22	<u>term investment shall not apply to the following:</u>	2.44
23	<u>(a) "Business opportunity" as defined in the Sale of</u>	1:lus
24	<u>Business Opportunities Act, ss. 559.80-559.815;</u>	2.45
25	<u>(b) Lands subject to the jurisdiction of chapter 498;</u>	2.46
26	<u>or</u>	
27	<u>(c) The offer or sale of tangible personal property</u>	2.47
28	<u>made in accordance with the following conditions:</u>	
29	<u>1. There are no specific representations or guarantees</u>	2.48
30	<u>made by the offeror or seller as to economic benefit to be</u>	
31	<u>derived from the purchase;</u>	2.49



1	<u>2. The tangible personal property is delivered to the</u>	2.50
2	<u>purchaser within 30 days after sale; and</u>	
3	<u>3. The seller has offered the purchaser a full refund</u>	2.51
4	<u>policy in writing, exercisable by the purchaser within 10 days</u>	
5	<u>of the date of delivery of such tangible personal property.</u>	2.52
6	<u>(11)†9†</u> "Investment adviser" means any person who for	2.54
7	compensation engages for all or part of his time, directly,	
8	indirectly, or through publications or writings, in the	2.56
9	business of advising others as to the value of securities or	
10	as to the advisability of investments in, purchasing, or	2.58
11	selling of securities, except a dealer whose performance of	
12	these services is solely incidental to the conduct of his	2.60
13	business as a dealer and who receives no special compensation	
14	for such services. The term "investment adviser" does not	2.61
15	include any licensed practicing attorney or certified public	2.62
16	accountant who renders or performs any of said services in	2.63
17	connection with the regular practice of his profession; any	2.64
18	bank authorized to do business in this state; any bank holding	2.65
19	company as defined in the Bank Holding Company Act of 1956, as	2.66
20	amended, authorized to do business in this state; any trust	2.67
21	company having trust powers which it is authorized to exercise	2.68
22	in the state, which renders or performs services in a	2.69
23	fiduciary capacity incidental to the exercise of its trust	2.70
24	powers; any person who renders investment advice exclusively	2.71
25	to insurance or investment companies; or any person who does	2.72
26	not hold himself out to the general public as an investment	2.73
27	adviser and has no more than 15 clients within 12 consecutive	2.74
28	months in this state.	
29	<u>(12)†10†</u> "Issuer" means any person who proposes to	1:1us
30	issue, has issued, or shall hereafter issue any security. Any	2.79
31	person who acts as a promoter for and on behalf of a	

1	corporation, trust, or unincorporated association or	2.81
2	partnership of any kind to be formed shall be deemed an	
3	issuer.	
4	<del>(13)</del> <del>(11)</del> "Offer to sell," "offer for sale," or "offer"	2.84
5	means any attempt or offer to dispose of, or solicitation of	
6	an offer to buy, a security or interest in a <u>security, or an</u>	3.2
7	<u>investment or interest therein</u> , for value.	
8	<del>(14)</del> <del>(12)</del> "Person" means a natural person, a	3.3
9	corporation created under the laws of this or any other state,	3.4
10	country, sovereignty, or political subdivision thereof, a	3.5
11	partnership, an association, a joint-stock company, a trust,	3.6
12	or an unincorporated organization.	
13	<del>(15)</del> <del>(13)</del> "Principal" means an executive officer of a	3.8
14	corporation, partner of a partnership, sole proprietor of a	
15	sole proprietorship, trustee of a trust, or any other person	3.10
16	with similar supervisory functions with respect to any	
17	organization, whether incorporated or unincorporated.	3.12
18	<del>(16)</del> <del>(14)</del> "Sale" or "sell" means any contract of sale	3.14
19	or disposition of <u>any investment</u> , a security, or interest in a	1:10a
20	security, for value. <u>With respect to a security or interest</u>	1:1us
21	<u>in a security</u> , the term defined in this subsection does not	3.18
22	include preliminary negotiations or agreements between an	3.19
23	issuer or any person on whose behalf an offering is to be made	3.20
24	and any underwriter or among underwriters who are or are to be	3.21
25	in privity of contract with an issuer. Any security given or	3.22
26	delivered with, or as a bonus on account of, any purchase of	3.23
27	securities or any other thing shall be conclusively presumed	3.24
28	to constitute a part of the subject of such purchase and to	3.25
29	have been offered and sold for value. The issue or transfer	3.27
30	of a right or privilege, when originally issued or transferred	
31	with a security, giving the holder of such security the right	3.28

1	to convert such security into another security of the same	3.29
2	issuer or of another person or giving a right to subscribe to	3.30
3	another security of the same issuer or of another person,	
4	which right cannot be exercised until some future date, shall	3.31
5	not be deemed to be an offer or sale of such other security;	
6	but the issue or transfer of such other security upon the	3.32
7	exercise of such right of conversion or subscription shall be	
8	deemed a sale of such other security.	3.33
9	<u>(17)</u> <del>(15)</del> "Salesman" means any natural person, other	1:1us
10	than a dealer, employed, appointed, or authorized by a dealer	3.36
11	or issuer to sell securities in any manner or act as an	
12	investment adviser as defined in this section. The partners	3.38
13	of a partnership and the executive officers of a corporation	
14	or other association registered as a dealer are not salesmen	3.39
15	within the meaning of this definition.	
16	<u>(18)</u> <del>(16)</del> "Security" means any note, stock, treasury	3.40
17	stock, bond, debenture, evidence of indebtedness, certificate	3.41
18	of interest or participation, whiskey warehouse receipt or	3.42
19	other commodity warehouse receipt, or right to subscribe to	3.43
20	any of the foregoing; certificate of interest in a profit-	3.44
21	sharing agreement or the right to participate therein;	3.45
22	certificate of interest in an oil, gas, petroleum, mineral, or	
23	mining title or lease, or the right to participate therein;	3.47
24	collateral trust certificate, reorganization certificate,	
25	preorganization subscription, or any transferable share,	3.49
26	investment contract, or beneficial interest in title to	
27	property, profits, or earnings; interests in or under a	3.51
28	profit-sharing or participation agreement or scheme, or any	
29	other instrument commonly known as a security, including an	3.53
30	interim or temporary bond, debenture, note, certificate, or	
31	receipt for a security or for subscription to a security.	3.55

1	<u>(19)</u> <del>(17)</del> "Securities option" means any contract which	3.56
2	entitles the holder to purchase or sell a given amount of the	3.58
3	underlying security at a fixed price within a specified period	
4	of time.	
5	<u>(20)</u> <del>(18)</del> "Underwriter" means any person who has	3.59
6	purchased from an issuer or an affiliate of an issuer with a	3.60
7	view to, or offers or sells for an issuer or an affiliate of	
8	an issuer in connection with, the distribution of any	3.61
9	security, or participates or has a direct or indirect	3.62
10	participation in any such undertaking, or participates or has	3.63
11	a participation in the direct or indirect underwriting of any	3.64
12	such undertaking; provided that a person shall be presumed not	3.65
13	to be an underwriter with respect to any securities which he	3.66
14	has owned beneficially for at least 1 year; and provided,	3.67
15	further, that a dealer shall not be considered an underwriter	
16	with respect to any securities which do not represent part of	3.69
17	an unsold allotment to or subscription by the dealer as a	
18	participant in the distribution of such securities by the	3.71
19	issuer or an affiliate of the issuer; provided, further, that	
20	in the case of securities acquired on the conversion of	3.74
21	another security without payment of additional consideration,	
22	the length of time such securities have been beneficially	3.76
23	owned by a person shall include the period during which the	
24	convertible security was beneficially owned and the period	3.78
25	during which the security acquired on conversion has been	
26	beneficially owned.	
27	Section 3. Paragraph (a) of subsection (3) and	3.79
28	subsection (4) of section 517.211, Florida Statutes, are	3.80
29	amended to read:	
30	517.211 Remedies available in cases of unlawful	3.81
31	sale.--	3.82

(3) In an action for rescission:

3.83

(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

4.1

4.4

4.5

(4) In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:

4.6

4.9

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

4.10

4.11

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

4.12

4.13

1:1us

4.15

Section 4. Subsection (2) of section 517.241, Florida Statutes, is amended to read:

4.16

517.241 Remedies.--

4.17

(2) Nothing in this chapter shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of securities or investments, or the right of the state to punish any person for any violation of any law.

4.18

4.20

4.22

4.23

Section 5. Section 517.251, Florida Statutes, is created to read:

4.24

517.251 Securities, investments, boiler rooms; prohibited practices; remedies.--

1:1us

4.26

(1) It is unlawful and a violation of this chapter for any person:

1:1us

4.27

1           (a) To offer or sell in or from this state any  
 2 security or investment when such offer or sale is in violation  
 3 of s. 517.301 or s. 517.311; or

4           (b) To directly or indirectly manage, supervise,  
 5 control, or own, either alone or in association with others,  
 6 any boiler room in this state which sells or offers for sale  
 7 any security or investment in violation of paragraph (a).

8           (2) Any purchaser of a security or investment sold in  
 9 violation of subsection (1) shall be entitled to rescind such  
 10 purchase at any time and recover damages as provided in s.  
 11 517.211(3)(a), (4), and (6).

12           Section 6. Section 517.275, Florida Statutes, is  
 13 created to read:

14           517.275 Commodities; prohibited practices.--It is  
 15 unlawful and a violation of this chapter for any person to  
 16 engage in or from this state in any act or practice  
 17 constituting a violation of any provision of the Commodity  
 18 Exchange Act (7 U.S.C. ss. 1 et seq.) or the rules and  
 19 regulations of the Commodity Futures Trading Commission  
 20 thereunder upon the effective date of this act.

21           Section 7. Subsection (1) of section 517.301, Florida  
 22 Statutes, is amended to read:

23           517.301 Fraudulent transactions; falsification or  
 24 concealment of facts.--It is unlawful and a violation of the  
 25 provisions of this chapter for any person:

26           (1) In connection with the offer, sale, or purchase of  
 27 any investment or security, including any security exempted  
 28 under the provisions of s. 517.051 and including any security  
 29 sold in any transaction exempted under the provisions of s.  
 30 517.061, directly or indirectly:

31

1	(a) To employ any device, scheme, or artifice to	4.49
2	defraud;	
3	(b) To obtain money or property by means of any untrue	4.50
4	statement of a material fact or any omission to state a	4.52
5	material fact necessary in order to make the statements made,	4.53
6	in the light of the circumstances under which they were made,	4.54
7	not misleading; or	
8	(c) To engage in any transaction, practice, or course	4.56
9	of business which operates or would operate as a fraud or	
0	deceit upon any person.	4.57
1	Section 8. Subsections (3) and (4) of section 517.311,	4.58
2	Florida Statutes, are renumbered as subsections (4) and (5),	4.60
3	respectively, and a new subsection (3) is added to said	
4	section to read:	4.61
5	517.311 False representations; deceptive words;	4.62
6	enforcement.--	
7	<u>(3) It is unlawful and a violation of this chapter for</u>	1:lus
8	<u>any person in connection with the offer or sale of any</u>	4.64
9	<u>investment to obtain money or property by means of:</u>	4.65
0	<u>(a) A misrepresentation that the investment offered or</u>	1:lus
1	<u>sold is guaranteed, sponsored, recommended, or approved by the</u>	4.66
2	<u>state or any agency or officer thereof or by the United States</u>	4.67
3	<u>or any agency or officer thereof; or</u>	4.68
4	<u>(b) A misrepresentation that such person is sponsored,</u>	1:lus
5	<u>recommended, or approved, or that such person's abilities or</u>	4.69
6	<u>qualifications have in any respect been passed upon, by the</u>	4.70
7	<u>state or any agency or officer thereof or by the United States</u>	
8	<u>or any agency or officer thereof.</u>	4.71
9	Section 9. Each section which is added to chapter 517,	4.72
0	Florida Statutes, by this act is repealed on October 1, 1990,	4.73
1		

1 and shall be reviewed by the Legislature pursuant to s. 11.61,  
2 Florida Statutes. 4.

3 Section 10. This act shall take effect upon becoming a 4.  
4 law.

5 \*\*\*\*\*

6 HOUSE SUMMARY

7 Redesignates the "Florida Securities Act" as the "Florida  
8 Investor Protection Act." Defines the term "investment"  
9 to mean any commitment of money or property, not  
10 otherwise a security as defined in the act, in  
11 expectation of receiving an economic benefit offered or  
12 sold, with certain exceptions. Broadens the act to  
13 include investments, thereby providing remedies for  
14 violations with respect to transactions not previously  
15 covered by the act. See bill for details.  
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**DRAFT** Y

FLORIDA INVESTOR PROTECTION ACT

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I. The Boiler Room Problem

The proposed Florida Investor Protection Act constitutes a major part of the continuing initiative of the Florida Department of Banking and Finance to rid the State of the "boiler room" operations which have earned Florida an unwanted reputation as the nation's fraud capital and caused Miami's Biscayne Boulevard, where many boiler rooms operate, to be called "maggot mile." Florida has long had the "glory" of being known as a state where white collar crime proliferates. The land frauds of the 1920's and the 1960's, the 14 percent rackets of the early 1970's and now the commodity and energy related frauds have all seriously tarnished Florida's "sunshine" image. Even the national media has recently again focused on Florida's situation calling for corrective legislation. The U. S. Senate's Permanent Subcommittee on Investigations is currently investigating commodity fraud and the Florida Senate's Committee on Economic, Community and Consumer Affairs is also investigating gold and precious metals frauds, in the wake of the multi-million dollar collapse of International Gold Bullion Exchange and similar investment frauds. Clearly, something must be done to effectively deal with boiler room companies and their "phone jockeys" to keep them from preying upon the elderly, unsophisticated and often unwary Florida citizen.

A boiler room is a firm or group of individuals that attempt to sell to the investing public purported interests in securities

and commodities - such as diamonds, strategic metals, oil and gas well participations and silver and gold bullion - through high pressure sales techniques and intimidating telephone calls initiated from office locations with batteries of telephones. False, fraudulent and deceptive inducements are key elements of their sales personnel's pitch. Boiler room operators and their sales personnel may have criminal records or be the subject of court orders barring them from the securities or commodities business. Very often they use aliases to hide their true identities.

In 1983 the Department's Division of Securities took action against 46 boiler room operations found to have violated Florida law by selling unregistered securities and lying to investors. The majority of these companies, however, did not request hearings or otherwise respond to the Division's action, but merely changed their pitch or product to comply with the letter of administrative orders without changing their method of operation.

It is impossible to quantify the extent of the boiler room problem in Florida. Yet it cannot be questioned that the losses by the public are significant. The Division of Securities has received hundreds of complaints from defrauded investors all over the United States. In addition to the Division's efforts, several Federal agencies have attacked the problem. The Commodity Futures Trading Commission has instituted lawsuits involving over 100 Florida companies. Federal criminal charges filed in Miami last September allege receipts by just three companies in just over

two years of \$56 million. Since the mid-1970's, federal investigators estimate that Florida boiler rooms have bilked investors out of over \$1 billion. The proximity of off-shore banking, a long telephone day and a warm climate have been proposed as reasons for the concentration of these operations in South Florida.

The need for state legislation to combat boiler rooms in Florida is clear. To avoid application of the Florida Securities Act (Chapter 517, Florida Statutes) most boiler rooms attempt to deal in investment programs which cannot be defined as securities. Several firms offering "filing services" in the Federal Government's oil and gas lease lottery, for instance, have contested the Department's finding that they have been selling securities and this issue remains before the courts. In light of the boiler rooms' practice of resisting control by varying their alleged investment offering, it is the Department's view that the nature of the alleged investment product sold is irrelevant to the boiler rooms. Accordingly, the interest of the investing public is best served both by expanding the Division of Securities' ability to address fraud in the solicitation of investments outside the traditional definition of a security and by making the boiler room method of operation illegal.

## II. Expanded Jurisdiction to Protect Investors

Many, if not most, boiler rooms offer purported investment

plans involving commodities. This is not only because of the esoteric appeal of such investments to the boiler rooms' victims, but also because of a historical vacuum in the regulation of commodities trading. Unlike the Federal Securities Act of 1933 and the Securities Exchange Act of 1934, in which concurrent federal and state jurisdiction has made possible the national system of Blue Sky laws, the Commodity Exchange Act passed by Congress in 1922 and the legislation creating the Commodity Futures Trading Commission in 1974 expressly preempted state regulatory laws. According to the legislative history, this was done in a desire for knowledgeable and uniform enforcement of the Commodity Exchange Act. A report of the Senate Committee on Governmental Affairs in 1982, however, found this fact to be largely responsible for an explosive growth of commodities fraud and recommended partial removal of federal preemption. What has come to be known as the "open season" provisions of the Futures Trading Act of 1982 are the result of that recommendation.

Under the 1982 Federal legislation, the anticipated role of the states in maintenance of an orderly national investment market was very much expanded. Exclusive jurisdiction of the Commodity Futures Trading Commission (CFTC) has been retained in regulation of the nation's duly constituted commodity exchanges and regulation of authorized commodity options programs and leverage contracts. But an "open season" has been declared on commodities fraud by authorizing state officials to apply any

state or federal law against persons engaged in "off-exchange" commodities trading. This removal of federal preemption permits the Florida Legislature to enact state laws which, for the first time, can be applied to commodities fraud in this state. The proposed Legislative Intent section of the Investor Protection Act addresses this expanded jurisdiction and Subsection (3) in the Prohibited Practices section would make violation of the present Federal statute a violation of Florida law against which the Department may take action.

*This bill is FI's response to the open season provision of the 1982 Act*

### III. Prohibition of Boiler Room Operation

In preparing this legislative proposal, the Department has sought only to propose an enforcement tool for use in correcting a serious abuse. Of particular concern has been that legitimate telephone solicitors not be termed boiler rooms thus being exempt from the provisions of this proposal. To accomplish this the Department has taken the approach used in legislation proposed in New York by the Bureau of Investor Protection and Securities of the New York State Department of Law. That legislation would make operation of a boiler room illegal in that state and defines the term to include the accomplishment of fraud. This approach makes it clear that unless persons are being defrauded by the operation, then it is not a boiler room and not subject to the chapter. To further clarify the type of operation to be prohibited, the proposal again follows the New York approach by excluding from the definition of a boiler room (1) facilities operated by licensed

securities dealers, associated persons or investment advisors already subject to regulation by the Department; (2) persons regulated by the CFTC or the National Futures Association; and (3) other persons already regulated as charities, financial institutions insurance companies or business opportunities (franchises).

Based upon the Division of Securities' experience, it is the Department's observation that there is no such thing as a legitimate boiler room. Accordingly, the idea of requiring these companies to post a bond or otherwise offer assurance that members of the public are protected has been rejected. Moreover, it is often, but not always, the case that Florida boiler rooms do not solicit Florida residents, restricting their damage to out-of-state investors. On the assumption that no boiler room could obtain a surety or afford a cash bond, a bonding requirement might provide an enforcement tool by creating a violation. It is felt by the Department, however, the definitional approach taken in the proposed Act more than adequately permits the Division of Securities to act to eliminate boiler room operation.

By providing a definitional exemption for persons registered under Chapter 517, the act contains a mechanism for legitimate members of the investment community to operate telephone solicitations if they so choose, subject to the Department's regulation of securities personnel and transactions. Similarly, because legitimate commodities dealers are closely supervised by the CFTC and self-regulatory organizations (over which the CFTC

exercises oversight responsibilities) such as the exchanges which require them to maintain high ethical standards and adequate capital, telephone activities of such persons are also completely excluded from the boiler room definition.

Having thus clearly limited "boiler rooms" to fraudulent operations without any legitimate reason for soliciting investors in or from this state, the proposed chapter would prohibit any person from offering or selling any security, commodity or any "plan or program of investment" from a boiler room. The Prohibited Practices section would apply both to the organizer and operator of a boiler room and to the sales personnel manning the telephones. It is felt that the approach of the proposed legislation gives ample authority to the Department to protect investors from the current abuses without creating any uncertainty as to the law's application.

The remaining provisions of the act are generally modeled after the present Chapter 517, authorizing the Department to make rules, conduct investigations, issue administrative orders and seek injunctions to restrain violators. In addition to operation of and solicitation from a boiler room and the commission of commodities fraud, the act would also forbid misrepresentations in connection with investment transactions not already covered by Chapter 517.

#### IV. Conclusion

Florida's boiler rooms are a blight upon the state's economy.



Their victims represent all segments of the investing public -- the sophisticated and the unsophisticated, the old and the young, the wealthy as well as those who can ill afford to lose their life savings. Emotional and physical harm often accompany the economic loss experienced by their victims. Moreover, legitimate firms in Florida's securities and commodities industry have suffered from the notoriety received by the boiler rooms, thereby hurting the economic development of the state by undermining public confidence in its investment community. It is the conclusion of the Department that Florida needs more effective tools to combat the abuses committed by boiler rooms in this state. The Florida Investor Protection Act is proposed for adoption by the Legislature to rid Florida of this problem by strengthening the Department's ability to deal with it.



SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Fort. <i>[Signature]</i>	Martin <i>[Signature]</i>	1. <u>COM</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Securities

BILL NO. AND SPONSOR:

SB 766 by  
Senator Carlucci

I. SUMMARY:

A. Present Situation:

Currently no Florida law specifically addresses "boiler room" solicitations. However, laws do exist governing obscene or harassing phone calls (s. 365.16, F.S.); automated telephone solicitation (s. 365.165, F.S.); fraudulent practices (Chapter 817, F.S.); and with respect to securities, laws prohibiting fraudulent transactions (s. 517.301, F.S.) and false representations (s. 517.311, F.S.). The Department of Banking and Finance pursuant to the Florida Securities Act, Chapter 517, F.S., only has jurisdiction to proceed against those "boiler room"s involved in securities activities proscribed by the Florida Securities Act.

In those instances where the department has jurisdiction, it is authorized to revoke, deny, or suspend registration of dealers of securities; conduct investigations; enjoin violators; and, issue cease and desist orders.

With respect to commodities, there is no Florida law specifically regulating such transactions. This situation is largely because regulation of commodities was the exclusive province of the federal government pursuant to the Federal Commodity Exchange Act (7 U.S.C. ss 1 et seq.). However, the Federal Futures Trading Act of 1982 amended the Commodity Exchange Act to allow states to prosecute and enjoin violators of the commodity act.

B. Effect of Proposed Changes:

This bill renames the Florida Securities Act as the Florida Investor Protection Act, and amends chapter 517, F.S., to expand jurisdiction of the department to include fraudulent "boiler room" activities and violations of the Federal Commodity Exchange Act. The following substantive changes are also made:

-Provides definition of "boiler room", "commodity", and "investment".

-Provides for an action for rescission or damages for commodities or any plan or program of investment sold in violation of the newly created "boiler room" prohibition.

-Prohibits violation of the Federal Commodity Exchange Act. Any violation constitutes a third degree felony. [The Federal Commodity Exchange Act provides in effect that all futures transactions in commodities covered by the Act must be made on an exchange designated as a contract market. The Act prohibits undesirable practices and

transactions such as: price manipulation and cornering of a commodity; cheating or defrauding of customers; making false reports to customers; disseminating false crop or market information; fictitious transactions; "puts," "calls," or "privileges."]

-Extends provisions relating to the prohibition of fraudulent transactions; falsifications, false representations and deceptive words to apply to commodities and any plan or program of investment.

## II. ECONOMIC IMPACT AND FISCAL NOTE:

### A. Public:

This bill should serve to protect the investing public in and outside of Florida from being defrauded out of their investment funds by unscrupulous and fraudulent commodity and investment salesmen and "boiler room" operators. According to the Office of the Comptroller, it is impossible to quantify the extent of the fraudulent securities, commodities and investment problems in Florida, though the known losses by the public are significant. The Division of Securities of the Office of the Comptroller in 1983 took action against 46 "boiler room" operations unlawfully selling securities. The Commodity Futures Trading Commission has instituted lawsuits involving over 100 Florida companies. In September 1983, the U.S. Attorney for the Southern District of Florida brought suit against 24 individuals in connection with the "boiler room" operations of three interrelated Miami based corporations -- U.S. Oil and Gas Corp., Eagle Oil and Gas Corp., and the Stratford Co. According to the federal indictment, over a period of 40 months, the "boiler room" operations of these three companies bilked the investing public out of \$56 million dollars.

By explicitly delegating authority to the department to prohibit fraudulent activities involving investments or operation of a "boiler room" or violations of the Federal Commodity Exchange Act, this legislation should reduce losses resulting from investment in fraudulent schemes since it enables the department to shutdown and take action against fraudulent and unscrupulous sales of securities, commodities and investments.

### B. Government:

This bill would give the department authority to investigate, enjoin, and take action against persons involved in or connected with fraudulent sales of investments and against persons violating provisions of the Commodity Exchange Act. Since such activity on behalf of the department may necessitate the department to hire additional personnel and expend funds to carry out the duties imposed under this Act, there would be some Government impact. However, at this time the department has not requested any additional personnel or funds to carry out this act.

## III. COMMENTS:

### IV. AMENDMENTS:

None.

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1. <u>Fort</u>	<u>Martin</u>	1. <u>COM</u>	<u>Fav./CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

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Securities

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CS/SB 766 by Commerce and  
Senator Carlucci

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III. COMMENTS:

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR SENATE BILL CS/SB 766.

Deletes the definition of commodities; modifies the  
definition of investments.

Committee on Commerce  
Fred A. Martin  
Staff Director

FM/ml  
C14(4-74) (File 2 copies with Committee Substitutes)

*S.D. Fla.  
Carriere*

8-1010-84

1                                   A bill to be entitled  
2                   An act relating to securities; amending ss.  
3                   517 011, 517.021, 517.211, 517 241, 517.301,  
4                   517.311, F.S ; creating ss. 517.251, 517.275,  
5                   F.S.; redesignating the Florida Securities Act  
6                   as the Florida Investor Protection Act;  
7                   providing definitions; including commodities  
8                   and plans or programs of investment within the  
9                   scope of the act; providing remedies,  
10                  prohibiting boiler rooms; prohibiting specified  
11                  acts with respect to commodities; prohibiting  
12                  fraudulent practices; prohibiting  
13                  misrepresentation; providing penalties;  
14                  providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18                  Section 1. Section 517.011, Florida Statutes, is  
19 amended to read:

20                  517.011 Short title.--This chapter may be cited as the  
21 "Florida Investor Protection Securities Act "

22                  Section 2. Section 517.021, Florida Statutes, is  
23 amended to read:

24                  517 021 Definitions --When used in this chapter,  
25 unless the context otherwise indicates, the following terms  
26 shall have the following respective meanings.

27                  (1) "Accredited investor" means any person who comes  
28 within any of the following categories, or who an issuer  
29 reasonably believes comes within any of the following  
30 categories, at the time of the sale of the securities to that  
31 person.



1           (a) Any bank as defined in s 3(a)(2) of the  
2 Securities Act of 1933, 15 U S C. s. 77c(a)(2), whether acting  
3 in its individual or fiduciary capacity or any insurance  
4 company as defined in s. 2(13) of that act; any investment  
5 company registered under the Investment Company Act of 1940 or  
6 a business development company as defined in s. 2(a)(48) of  
7 that act, any small business investment company licensed by  
8 the United States Small Business Administration under s.  
9 301(c) or (d) of the Small Business Investment Act of 1958, or  
10 any employee benefit plan within the meaning of Title I of the  
11 Employee Retirement Income Security Act of 1974, if the  
12 investment decision is made by a plan fiduciary, as defined in  
13 s. 3(21) of such act, which is either a bank, insurance  
14 company, or registered investment adviser or if the employee  
15 benefit plan has total assets in excess of \$5 million.

16           (b) Any private business development company as  
17 defined in s. 202(a)(22) of the Investment Advisers Act of  
18 1940.

19           (c) Any organization described in s. 501(c)(3) of the  
20 Internal Revenue Code with total assets in excess of \$5  
21 million.

22           (d) Any director, executive officer, or general  
23 partner of the issuer of the securities being offered or sold  
24 or any director, executive officer, or general partner of a  
25 general partner of that issuer.

26           (e) Any person who purchases at least \$150,000 worth  
27 of the securities being offered, when the price of the  
28 purchaser's total purchase does not exceed 20 percent of the  
29 purchaser's net worth at the time of sale, or joint net worth  
30 with that person's spouse, for one or any combination of the  
31 following:

- 1           1. Cash.
- 2           2. Securities for which market quotations are readily  
3 available.
- 4           3. An unconditional obligation to pay cash or  
5 securities for which market quotations are readily available,  
6 which obligation is to be discharged within 5 years of the  
7 sale of the securities to the purchaser.
- 8           4. The cancellation of any indebtedness owed by the  
9 issuer to the purchaser
- 10           (f) Any natural person whose individual net worth, or  
11 joint net worth with that person's spouse, at the time of his  
12 purchase exceeds \$1 million
- 13           (g) Any natural person who had an individual income in  
14 excess of \$200,000 in each of the 2 most recent years and who  
15 reasonably expects an income in excess of \$200,000 in the  
16 current year
- 17           (h) Any entity in which all of the equity owners are  
18 accredited investors under paragraph (a), paragraph (b),  
19 paragraph (c), paragraph (d), paragraph (f), or paragraph (g).
- 20           (2) "Affiliate" means a person that directly, or  
21 indirectly through one or more intermediaries, controls, is  
22 controlled by, or is under common control with an applicant or  
23 registrant.
- 24           (3) "Agent" means salesman as herein defined
- 25           (4) "Associated person" means any partner, officer,  
26 director, or branch manager of a dealer or investment adviser  
27 or any person occupying a similar status or performing similar  
28 functions or any natural person directly or indirectly  
29 controlling or controlled by such dealer or investment  
30 adviser, other than an employee whose function is only  
31 clerical or ministerial

1           (5) "Boiler room" means an enterprise in which two or  
2 more persons engage in telephone communications with members  
3 of the public using two or more telephones at one location, or  
4 at more than one location in a common scheme or enterprise,  
5 when such telephone communications operate or would operate as  
6 a fraud or deceit upon any client or participant or  
7 prospective client or participant.

8           (6) ~~(5)~~ "Broker" means dealer as herein defined.

9           (7) "Commodity" means all goods and articles and all  
10 contracts for either present or future delivery thereof,  
11 including all commodity options, all commodity pool  
12 participations, all commodity-related investments, and all  
13 services, rights, and interests in which contracts for future  
14 delivery are dealt with and all such contracts

15           (8) ~~(6)~~ "Control," including the terms "controlling,"  
16 "controlled by," and "under common control with," means the  
17 possession, directly or indirectly, of the power to direct or  
18 cause the direction of the management or policies of a person,  
19 whether through the ownership of voting securities, by  
20 contract, or otherwise.

21           (9) ~~(7)~~ "Dealer" means any person, other than a  
22 salesman registered under this chapter, who engages, either  
23 for all or part of his time, directly or indirectly, as broker  
24 or principal in the business of offering, buying, selling, or  
25 otherwise dealing or trading in securities issued by another  
26 person. The term "dealer" also includes any issuer who  
27 through persons directly compensated or controlled by the  
28 issuer engages, either for all or part of his time, directly  
29 or indirectly, in the business of offering or selling  
30 securities which are issued or are proposed to be issued by  
31 said issuer. The term "dealer" does not include any licensed

1 practicing attorney who renders or performs any of said  
2 services in connection with the regular practice of his  
3 profession; any bank authorized to do business in this state;  
4 any trust company having trust powers which it is authorized  
5 to exercise in this state, which renders or performs services  
6 in a fiduciary capacity incidental to the exercise of its  
7 trust powers; any wholesaler selling exclusively to dealers;  
8 any person buying and selling exclusively through a registered  
9 dealer or stock exchange; or, pursuant to s. 517.061(12), any  
10 person associated with an issuer of securities if such person  
11 is a bona fide employee of the issuer who has not participated  
12 in the distribution or sale of any securities within the  
13 preceding 12 months and who primarily performs, or is intended  
14 to perform at the end of the distribution, substantial duties  
15 for, or on behalf of, the issuer other than in connection with  
16 transactions in securities.

17 (10) ~~(8)~~ "Department" means the Department of Banking  
18 and Finance

19 (11) "Investment" means all commitments of money or  
20 property in expectation of economic benefit. The term  
21 "investment" does not include a "business opportunity" as  
22 defined in the Sale of Business Opportunities Act, ss. 559 80-  
23 559.815.

24 (12) ~~(9)~~ "Investment adviser" means any person who for  
25 compensation engages for all or part of his time, directly,  
26 indirectly, or through publications or writings, in the  
27 business of advising others as to the value of securities or  
28 as to the advisability of investments in, purchasing, or  
29 selling of securities, except a dealer whose performance of  
30 these services is solely incidental to the conduct of his  
31 business as a dealer and who receives no special compensation

1 for such services. The term "investment adviser" does not  
 2 include any licensed practicing attorney or certified public  
 3 accountant who renders or performs any of said services in  
 4 connection with the regular practice of his profession; any  
 5 bank authorized to do business in this state; any bank holding  
 6 company as defined in the Bank Holding Company Act of 1956, as  
 7 amended, authorized to do business in this state; any trust  
 8 company having trust powers which it is authorized to exercise  
 9 in the state, which renders or performs services in a  
 10 fiduciary capacity incidental to the exercise of its trust  
 11 powers; any person who renders investment advice exclusively  
 12 to insurance or investment companies, or any person who does  
 13 not hold himself out to the general public as an investment  
 14 adviser and has no more than 15 clients within 12 consecutive  
 15 months in this state.

16 (13) ~~(10)~~ "Issuer" means any person who proposes to  
 17 issue, has issued, or shall hereafter issue any security. Any  
 18 person who acts as a promoter for and on behalf of a  
 19 corporation, trust, or unincorporated association or  
 20 partnership of any kind to be formed shall be deemed an  
 21 issuer.

22 (14) ~~(11)~~ "Offer to sell," "offer for sale," or "offer"  
 23 means any attempt or offer to dispose of, or solicitation of  
 24 an offer to buy, a security or interest in a security, a  
 25 commodity or interest in a commodity, or a plan or program of  
 26 investment or an interest therein, for value.

27 (15) ~~(12)~~ "Person" means a natural person, a  
 28 corporation created under the laws of this or any other state,  
 29 country, sovereignty, or political subdivision thereof, a  
 30 partnership, an association, a joint-stock company, a trust,  
 31 or an unincorporated organization.

1           (16) ~~(13)~~ "Principal" means an executive officer of a  
2 corporation, partner of a partnership, sole proprietor of a  
3 sole proprietorship, trustee of a trust, or any other person  
4 with similar supervisory functions with respect to any  
5 organization, whether incorporated or unincorporated.

6           (17) ~~(14)~~ "Sale" or "sell" means any contract of sale  
7 or disposition of any item, a security, or interest in a  
8 security, for value With respect to any security or interest  
9 in a security, the term defined in this subsection does not  
10 include preliminary negotiations or agreements between an  
11 issuer or any person on whose behalf an offering is to be made  
12 and any underwriter or among underwriters who are or are to be  
13 in privity of contract with an issuer. Any security given or  
14 delivered with, or as a bonus on account of, any purchase of  
15 securities or any other thing shall be conclusively presumed  
16 to constitute a part of the subject of such purchase and to  
17 have been offered and sold for value. The issue or transfer  
18 of a right or privilege, when originally issued or transferred  
19 with a security, giving the holder of such security the right  
20 to convert such security into another security of the same  
21 issuer or of another person or giving a right to subscribe to  
22 another security of the same issuer or of another person,  
23 which right cannot be exercised until some future date, shall  
24 not be deemed to be an offer or sale of such other security;  
25 but the issue or transfer of such other security upon the  
26 exercise of such right of conversion or subscription shall be  
27 deemed a sale of such other security.

28           (18) ~~(15)~~ "Salesman" means any natural person, other  
29 than a dealer, employed, appointed, or authorized by a dealer  
30 or issuer to sell securities in any manner or act as an  
31 investment adviser as defined in this section. The partners

1 of a partnership and the executive officers of a corporation  
2 or other association registered as a dealer are not salesmen  
3 within the meaning of this definition.

4 (19) ~~(16)~~ "Security" means any note, stock, treasury  
5 stock, bond, debenture, evidence of indebtedness, certificate  
6 of interest or participation, whiskey warehouse receipt or  
7 other commodity warehouse receipt, or right to subscribe to  
8 any of the foregoing; certificate of interest in a profit-  
9 sharing agreement or the right to participate therein;  
10 certificate of interest in an oil, gas, petroleum, mineral, or  
11 mining title or lease, or the right to participate therein;  
12 collateral trust certificate, reorganization certificate,  
13 preorganization subscription, or any transferable share,  
14 investment contract, or beneficial interest in title to  
15 property, profits, or earnings; interests in or under a  
16 profit-sharing or participation agreement or scheme, or any  
17 other instrument commonly known as a security, including an  
18 interim or temporary bond, debenture, note, certificate, or  
19 receipt for a security or for subscription to a security.

20 (20) ~~(17)~~ "Securities option" means any contract which  
21 entitles the holder to purchase or sell a given amount of the  
22 underlying security at a fixed price within a specified period  
23 of time.

24 (21) ~~(18)~~ "Underwriter" means any person who has  
25 purchased from an issuer or an affiliate of an issuer with a  
26 view to, or offers or sells for an issuer or an affiliate of  
27 an issuer in connection with, the distribution of any  
28 security, or participates or has a direct or indirect  
29 participation in any such undertaking, or participates or has  
30 a participation in the direct or indirect underwriting of any  
31 such undertaking, provided that a person shall be presumed not

1 to be an underwriter with respect to any securities which he  
2 has owned beneficially for at least 1 year; and provided,  
3 further, that a dealer shall not be considered an underwriter  
4 with respect to any securities which do not represent part of  
5 an unsold allotment to or subscription by the dealer as a  
6 participant in the distribution of such securities by the  
7 issuer or an affiliate of the issuer, provided, further, that  
8 in the case of securities acquired on the conversion of  
9 another security without payment of additional consideration,  
10 the length of time such securities have been beneficially  
11 owned by a person shall include the period during which the  
12 convertible security was beneficially owned and the period  
13 during which the security acquired on conversion has been  
14 beneficially owned.

15 Section 3. Subsections (3) and (4) of section 517 211,  
16 Florida Statutes, are amended to read.

17 517.211 Remedies available in cases of unlawful  
18 sale.--

19 (3) In an action for rescission:

20 (a) A purchaser may recover the consideration paid for  
21 the security, commodity, or plan or program of investment,  
22 plus interest thereon at the legal rate, less the amount of  
23 any income received by the purchaser on the security upon  
24 tender of the security, commodity, or plan or program of  
25 investment.

26 (b) A seller may recover the security upon tender of  
27 the consideration paid for the security, plus interest at the  
28 legal rate, less the amount of any income received by the  
29 defendant on the security.

30 (4) In an action for damages brought by a purchaser of  
31 a security, commodity, or plan or program of investment, the



1 plaintiff shall recover an amount equal to the difference  
2 between:

3 (a) The consideration paid for the security,  
4 commodity, or plan or program of investment, plus interest  
5 thereon at the legal rate from the date of purchase; and

6 (b) The value of the security, commodity, or plan or  
7 program of investment at the time it was disposed of by the  
8 plaintiff, plus the amount of any income received on the  
9 security, commodity, or plan or program of investment by the  
10 plaintiff.

11 Section 4. Section 517.241, Florida Statutes, is  
12 amended to read:

13 517.241 Remedies --

14 (1) Any person aggrieved by a final order of the  
15 department may have said order reviewed as provided by chapter  
16 120, the Administrative Procedure Act

17 (2) Nothing in this chapter shall limit any statutory  
18 or common-law right of any person to bring any action in any  
19 court for any act involved in the sale of securities,  
20 commodities, or any plan or program of investment, or the  
21 right of the state to punish any person for any violation of  
22 any law.

23 (3) The same civil remedies provided by laws of the  
24 United States for the purchaser or seller of securities under  
25 any such laws, in interstate commerce, shall extend also to  
26 purchasers or sellers of securities under this chapter

27 (4) When not in conflict with the Constitution or laws  
28 of the United States, the courts of this state have the same  
29 jurisdiction over civil suits instituted in connection with  
30 the sale or offer of sale of securities under any laws of the  
31

1 United States as they may have under similar cases instituted  
2 under the laws of the state.

3 Section 5. Section 517.251, Florida Statutes, is  
4 created to read:

5 517.251 Boiler rooms; prohibited practices;  
6 remedies.--

7 (1) It is unlawful and a violation of this chapter for  
8 any person

9 (a) To offer or sell in or from this state any  
10 security, commodity, or plan or program of investment by use  
11 of a boiler room; or

12 (b) To directly or indirectly manage, supervise,  
13 control, or own, either alone or in association with others,  
14 any boiler room in this state.

15 (2) Any purchaser of a security, commodity, or plan or  
16 program of investment sold in violation of subsection (1)  
17 shall be entitled to rescind such purchase at any time and  
18 recover damages as provided in subsections (3)(a), (4), and  
19 (6) of s 517.211

20 Section 6 Section 517.275, Florida Statutes, is  
21 created to read:

22 517.275 Commodities, prohibited practices --It is  
23 unlawful and a violation of this chapter for any person to  
24 engage in or from this state in any act or practice  
25 constituting a violation of any provision of the federal  
26 Commodity Exchange Act, 7 USC ss. 1-26, in effect on April 1,  
27 1984 or of any rule or regulation thereunder in effect on  
28 April 1, 1984.

29 Section 7. Subsection (1) of section 517 301, Florida  
30 Statutes, is amended to read:

31

1           517 301 Fraudulent transactions; falsification or  
2 concealment of facts.--It is unlawful and a violation of the  
3 provisions of this chapter for any person:

4           (1) In connection with the offer, sale, or purchase of  
5 any commodity, plan or program of investment, or security,  
6 including any security exempted under the provisions of s  
7 517 051 and including any security sold in any transaction  
8 exempted under the provisions of s. 517.061, directly or  
9 indirectly:

10           (a) To employ any device, scheme, or artifice to  
11 defraud;

12           (b) To obtain money or property by means of any untrue  
13 statement of a material fact or any omission to state a  
14 material fact necessary in order to make the statements made,  
15 in the light of the circumstances under which they were made,  
16 not misleading, or

17           (c) To engage in any transaction, practice, or course  
18 of business which operates or would operate as a fraud or  
19 deceit upon any person.

20           Section 8 Subsections (3) and (4) of section 517.311,  
21 Florida Statutes, are renumbered as subsections (4) and (5),  
22 respectively, and a new subsection (3) is added to said  
23 section to read:

24           517.311 False representations; deceptive words;  
25 enforcement.--

26           (3) It is unlawful and a violation of this chapter for  
27 any person in connection with the offer or sale of commodities  
28 or of any plan or program of investment to obtain money or  
29 property by means of:

30           (a) A misrepresentation that the commodities or plan  
31 or program of investment offered or sold are guaranteed,

1 sponsored, recommended, or approved by the state or any agency  
2 or officer thereof or by the United States or any agency or  
3 officer thereof; or

4 (b) A misrepresentation that such person is sponsored,  
5 recommended, or approved, or that such person's abilities or  
6 qualifications have in any respect been passed upon, by the  
7 state or any agency or officer thereof or by the United States  
8 or any agency or officer thereof.

9 Section 9. This act shall take effect upon becoming a  
10 law.

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SENATE SUMMARY

Revises various provisions of the Florida Securities Act. Major changes from current law include redesignating the act as the Florida Investor Protection Act, applying the act to commodities and plans or programs of investment, and prohibiting boiler rooms.



# PRELIMINARY DRAFT

310-1537-84

CS for SB 766

1                   A bill to be entitled  
2           An act relating to investment solicitation;  
3           amending s. 517.011, F S., redesignating the  
4           "Florida Securities Act" as the "Florida  
5           Investor Protection Act"; amending s. 517.021,  
6           F.S., providing definitions; amending s.  
7           517.211, F.S., relating to remedies available  
8           with respect to unlawful offers or sales of  
9           securities or investments; amending s. 517.241,  
10          F S., relating to remedies; creating s.  
11          517.251, F S., providing for prohibited  
12          practices and remedies with respect to certain  
13          securities, investments, or boiler rooms;  
14          creating s 517.275, F.S , relating to  
15          prohibited practices with respect to  
16          commodities; amending s. 517.301, F.S  
17          relating to fraudulent transactions; amending  
18          s. 517.311, F.S., prohibiting certain false  
19          representation with respect to investments;  
20          providing for review and repeal; providing an  
21          effective date

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1    Section 517 011, Florida Statutes, is  
26 amended to read:

27           517.011 Short title.--This chapter may be cited as the  
28 "Florida Investor Protection Securities Act."

29           Section 2.   Section 517.021, Florida Statutes, is  
30 amended to read:

31

1           517.021 Definitions.--When used in this chapter,  
2 unless the context otherwise indicates, the following terms  
3 shall have the following respective meanings:

4           (1) "Accredited investor" means any person who comes  
5 within any of the following categories, or who an issuer  
6 reasonably believes comes within any of the following  
7 categories, at the time of the sale of the securities to that  
8 person.

9           (a) Any bank as defined in s. 3(a)(2) of the  
10 Securities Act of 1933, 15 U.S.C. s. 77c(a)(2), whether acting  
11 in its individual or fiduciary capacity or any insurance  
12 company as defined in s. 2(13) of that act; any investment  
13 company registered under the Investment Company Act of 1940 or  
14 a business development company as defined in s. 2(a)(48) of  
15 that act; any small business investment company licensed by  
16 the United States Small Business Administration under s.  
17 301(c) or (d) of the Small Business Investment Act of 1958; or  
18 any employee benefit plan within the meaning of Title I of the  
19 Employee Retirement Income Security Act of 1974, if the  
20 investment decision is made by a plan fiduciary, as defined in  
21 s. 3(21) of such act, which is either a bank, insurance  
22 company, or registered investment adviser or if the employee  
23 benefit plan has total assets in excess of \$5 million.

24           (b) Any private business development company as  
25 defined in s. 202(a)(22) of the Investment Advisers Act of  
26 1940.

27           (c) Any organization described in s. 501(c)(3) of the  
28 Internal Revenue Code with total assets in excess of \$5  
29 million.

30           (d) Any director, executive officer, or general  
31 partner of the issuer of the securities being offered or sold



1 or any director, executive officer, or general partner of a  
2 general partner of that issuer

3 (e) Any person who purchases at least \$150,000 worth  
4 of the securities being offered, when the price of the  
5 purchaser's total purchase does not exceed 20 percent of the  
6 purchaser's net worth at the time of sale, or joint net worth  
7 with that person's spouse, for one or any combination of the  
8 following:

9 1. Cash.

10 2. Securities for which market quotations are readily  
11 available.

12 3. An unconditional obligation to pay cash or  
13 securities for which market quotations are readily available,  
14 which obligation is to be discharged within 5 years of the  
15 sale of the securities to the purchaser.

16 4 The cancellation of any indebtedness owed by the  
17 issuer to the purchaser.

18 (f) Any natural person whose individual net worth, or  
19 joint net worth with that person's spouse, at the time of his  
20 purchase exceeds \$1 million.

21 (g) Any natural person who had an individual income in  
22 excess of \$200,000 in each of the 2 most recent years and who  
23 reasonably expects an income in excess of \$200,000 in the  
24 current year.

25 (h) Any entity in which all of the equity owners are  
26 accredited investors under paragraph (a), paragraph (b),  
27 paragraph (c), paragraph (d), paragraph (f), or paragraph (g)

28 (2) "Affiliate" means a person that directly, or  
29 indirectly through one or more intermediaries, controls, is  
30 controlled by, or is under common control with an applicant or  
31 registrant.

1 (3) "Agent" means salesman as herein defined.

2 (4) "Associated person" means any partner, officer,  
3 director, or branch manager of a dealer or investment adviser  
4 or any person occupying a similar status or performing similar  
5 functions or any natural person directly or indirectly  
6 controlling or controlled by such dealer or investment  
7 adviser, other than an employee whose function is only  
8 clerical or ministerial.

9 (5) "Boiler room" means an enterprise in which two or  
10 more persons engage in telephone communications with members  
11 of the public using two or more telephones at one location, or  
12 at more than one location in a common scheme or enterprise.

13 ~~(6)~~(5) "Broker" means dealer as herein defined.

14 ~~(7)~~(6) "Control," including the terms "controlling,"  
15 "controlled by," and "under common control with," means the  
16 possession, directly or indirectly, of the power to direct or  
17 cause the direction of the management or policies of a person,  
18 whether through the ownership of voting securities, by  
19 contract, or otherwise.

20 ~~(8)~~(7) "Dealer" means any person, other than a  
21 salesman registered under this chapter, who engages, either  
22 for all or part of his time, directly or indirectly, as broker  
23 or principal in the business of offering, buying, selling, or  
24 otherwise dealing or trading in securities issued by another  
25 person. The term "dealer" also includes any issuer who  
26 through persons directly compensated or controlled by the  
27 issuer engages, either for all or part of his time, directly  
28 or indirectly, in the business of offering or selling  
29 securities which are issued or are proposed to be issued by  
30 said issuer. The term "dealer" does not include any licensed  
31 practicing attorney who renders or performs any of said

1 services in connection with the regular practice of his  
2 profession; any bank authorized to do business in this state;  
3 any trust company having trust powers which it is authorized  
4 to exercise in this state, which renders or performs services  
5 in a fiduciary capacity incidental to the exercise of its  
6 trust powers; any wholesaler selling exclusively to dealers;  
7 any person buying and selling exclusively through a registered  
8 dealer or stock exchange; or, pursuant to s. 517.061(12), any  
9 person associated with an issuer of securities if such person  
10 is a bona fide employee of the issuer who has not participated  
11 in the distribution or sale of any securities within the  
12 preceding 12 months and who primarily performs, or is intended  
13 to perform at the end of the distribution, substantial duties  
14 for, or on behalf of, the issuer other than in connection with  
15 transactions in securities.

16 ~~(9)~~ (8) "Department" means the Department of Banking  
17 and Finance.

18 (10) "Investment" means any commitment of money or  
19 property, not otherwise a security as defined in this chapter,  
20 in expectation of receiving an economic benefit offered or  
21 sold in violation of s. 517.301 or s. 517.311, except that the  
22 term investment shall not apply to the following

23 (a) "Business opportunity" as defined in the Sale of  
24 Business Opportunities Act, ss. 559.80-559.815,

25 (b) Lands subject to the jurisdiction of chapter 498,

26 or

27 (c) The offer or sale of tangible personal property  
28 made in accordance with the following conditions:

29 1. There are no specific representations or guarantees  
30 made by the offeror or seller as to economic benefit to be  
31 derived from the purchase,

1           2. The tangible personal property is delivered to the  
2 purchaser within 30 days after sale; and

3           3. The seller has offered the purchaser a full refund  
4 policy in writing, exercisable by the purchaser within 10 days  
5 of the date of delivery of such tangible personal property.

6           ~~(11)~~~~(9)~~ "Investment adviser" means any person who for  
7 compensation engages for all or part of his time, directly,  
8 indirectly, or through publications or writings, in the  
9 business of advising others as to the value of securities or  
10 as to the advisability of investments in, purchasing, or  
11 selling of securities, except a dealer whose performance of  
12 these services is solely incidental to the conduct of his  
13 business as a dealer and who receives no special compensation  
14 for such services. The term "investment adviser" does not  
15 include any licensed practicing attorney or certified public  
16 accountant who renders or performs any of said services in  
17 connection with the regular practice of his profession, any  
18 bank authorized to do business in this state; any bank holding  
19 company as defined in the Bank Holding Company Act of 1956, as  
20 amended, authorized to do business in this state; any trust  
21 company having trust powers which it is authorized to exercise  
22 in the state, which renders or performs services in a  
23 fiduciary capacity incidental to the exercise of its trust  
24 powers; any person who renders investment advice exclusively  
25 to insurance or investment companies; or any person who does  
26 not hold himself out to the general public as an investment  
27 adviser and has no more than 15 clients within 12 consecutive  
28 months in this state.

29           ~~(12)~~~~(10)~~ "Issuer" means any person who proposes to  
30 issue, has issued, or shall hereafter issue any security Any  
31 person who acts as a promoter for and on behalf of a

1 corporation, trust, or unincorporated association or  
2 partnership of any kind to be formed shall be deemed an  
3 issuer.

4 ~~(13)~~~~(11)~~ "Offer to sell," "offer for sale," or "offer"  
5 means any attempt or offer to dispose of, or solicitation of  
6 an offer to buy, a security or interest in a security, or an  
7 investment or interest therein, for value.

8 ~~(14)~~~~(12)~~ "Person" means a natural person, a  
9 corporation created under the laws of this or any other state,  
10 country, sovereignty, or political subdivision thereof, a  
11 partnership, an association, a joint-stock company, a trust,  
12 or an unincorporated organization.

13 ~~(15)~~~~(13)~~ "Principal" means an executive officer of a  
14 corporation, partner of a partnership, sole proprietor of a  
15 sole proprietorship, trustee of a trust, or any other person  
16 with similar supervisory functions with respect to any  
17 organization, whether incorporated or unincorporated.

18 ~~(16)~~~~(14)~~ "Sale" or "sell" means any contract of sale  
19 or disposition of any investment, a security, or interest in a  
20 security, for value. With respect to a security or interest  
21 in a security, the term defined in this subsection does not  
22 include preliminary negotiations or agreements between an  
23 issuer or any person on whose behalf an offering is to be made  
24 and any underwriter or among underwriters who are or are to be  
25 in privity of contract with an issuer Any security given or  
26 delivered with, or as a bonus on account of, any purchase of  
27 securities or any other thing shall be conclusively presumed  
28 to constitute a part of the subject of such purchase and to  
29 have been offered and sold for value. The issue or transfer  
30 of a right or privilege, when originally issued or transferred  
31 with a security, giving the holder of such security the right

1 to convert such security into another security of the same  
2 issuer or of another person or giving a right to subscribe to  
3 another security of the same issuer or of another person,  
4 which right cannot be exercised until some future date, shall  
5 not be deemed to be an offer or sale of such other security;  
6 but the issue or transfer of such other security upon the  
7 exercise of such right of conversion or subscription shall be  
8 deemed a sale of such other security.

9       (17) ~~(15)~~ "Salesman" means any natural person, other  
10 than a dealer, employed, appointed, or authorized by a dealer  
11 or issuer to sell securities in any manner or act as an  
12 investment adviser as defined in this section. The partners  
13 of a partnership and the executive officers of a corporation  
14 or other association registered as a dealer are not salesmen  
15 within the meaning of this definition.

16       (18) ~~(16)~~ "Security" means any note, stock, treasury  
17 stock, bond, debenture, evidence of indebtedness, certificate  
18 of interest or participation, whiskey warehouse receipt or  
19 other commodity warehouse receipt, or right to subscribe to  
20 any of the foregoing; certificate of interest in a profit-  
21 sharing agreement or the right to participate therein;  
22 certificate of interest in an oil, gas, petroleum, mineral, or  
23 mining title or lease, or the right to participate therein;  
24 collateral trust certificate, reorganization certificate,  
25 preorganization subscription, or any transferable share,  
26 investment contract, or beneficial interest in title to  
27 property, profits, or earnings; interests in or under a  
28 profit-sharing or participation agreement or scheme, or any  
29 other instrument commonly known as a security, including an  
30 interim or temporary bond, debenture, note, certificate, or  
31 receipt for a security or for subscription to a security.

1           (19)~~(17)~~ "Securities option" means any contract which  
2           entitles the holder to purchase or sell a given amount of the  
3           underlying security at a fixed price within a specified period  
4           of time.

5           (20)~~(18)~~ "Underwriter" means any person who has  
6           purchased from an issuer or an affiliate of an issuer with a  
7           view to, or offers or sells for an issuer or an affiliate of  
8           an issuer in connection with, the distribution of any  
9           security, or participates or has a direct or indirect  
10          participation in any such undertaking, or participates or has  
11          a participation in the direct or indirect underwriting of any  
12          such undertaking; provided that a person shall be presumed not  
13          to be an underwriter with respect to any securities which he  
14          has owned beneficially for at least 1 year; and provided,  
15          further, that a dealer shall not be considered an underwriter  
16          with respect to any securities which do not represent part of  
17          an unsold allotment to or subscription by the dealer as a  
18          participant in the distribution of such securities by the  
19          issuer or an affiliate of the issuer; provided, further, that  
20          in the case of securities acquired on the conversion of  
21          another security without payment of additional consideration,  
22          the length of time such securities have been beneficially  
23          owned by a person shall include the period during which the  
24          convertible security was beneficially owned and the period  
25          during which the security acquired on conversion has been  
26          beneficially owned.

27                 Section 3. Paragraph (a) of subsection (3) and  
28                 subsection (4) of section 517.211, Florida Statutes, are  
29                 amended to read:

30                         517.211 Remedies available in cases of unlawful  
31                         sale --

1 (3) In an action for rescission:

2 (a) A purchaser may recover the consideration paid for  
3 the security or investment, plus interest thereon at the legal  
4 rate, less the amount of any income received by the purchaser  
5 on the security or investment upon tender of the security or  
6 investment.

7 (4) In an action for damages brought by a purchaser of  
8 a security or investment, the plaintiff shall recover an  
9 amount equal to the difference between:

10 (a) The consideration paid for the security or  
11 investment, plus interest thereon at the legal rate from the  
12 date of purchase; and

13 (b) The value of the security or investment at the  
14 time it was disposed of by the plaintiff, plus the amount of  
15 any income received on the security or investment by the  
16 plaintiff.

17 Section 4 Subsection (2) of section 517.241, Florida  
18 Statutes, is amended to read:

19 517.241 Remedies.--

20 (2) Nothing in this chapter shall limit any statutory  
21 or common-law right of any person to bring any action in any  
22 court for any act involved in the sale of securities or  
23 investments, or the right of the state to punish any person  
24 for any violation of any law.

25 Section 5. Section 517.251, Florida Statutes, is  
26 created to read:

27 517.251 Securities, investments, boiler rooms;  
28 prohibited practices, remedies --

29 (1) It is unlawful and a violation of this chapter for  
30 any person:

31



1 (a) To offer or sell in or from this state any  
 2 security or investment when such offer or sale is in violation  
 3 of s. 517.301 or s. 517.311; or

4 (b) To directly or indirectly manage, supervise,  
 5 control, or own, either alone or in association with others,  
 6 any boiler room in this state which sells or offers for sale  
 7 any security or investment in violation of paragraph (a).

8 (2) Any purchaser of a security or investment sold in  
 9 violation of subsection (1) shall be entitled to rescind such  
 10 purchase at any time and recover damages as provided in s.  
 11 517.211(3)(a), (4), and (6).

12 Section 6. Section 517 275, Florida Statutes, is  
 13 created to read:

14 517.275 Commodities; prohibited practices.--It is  
 15 unlawful and a violation of this chapter for any person to  
 16 engage in or from this state in any act or practice  
 17 constituting a violation of any provision of the Commodity  
 18 Exchange Act (7 U.S.C. ss. 1 et seq.) or the rules and  
 19 regulations of the Commodity Futures Trading Commission  
 20 thereunder upon the effective date of this act.

21 Section 7. Subsection (1) of section 517.301, Florida  
 22 Statutes, is amended to read:

23 517.301 Fraudulent transactions; falsification or  
 24 concealment of facts.--It is unlawful and a violation of the  
 25 provisions of this chapter for any person:

26 (1) In connection with the offer, sale, or purchase of  
 27 any investment or security, including any security exempted  
 28 under the provisions of s. 517.051 and including any security  
 29 sold in any transaction exempted under the provisions of s.  
 30 517.061, directly or indirectly:

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1 (a) To employ any device, scheme, or artifice to  
2 defraud;

3 (b) To obtain money or property by means of any untrue  
4 statement of a material fact or any omission to state a  
5 material fact necessary in order to make the statements made,  
6 in the light of the circumstances under which they were made,  
7 not misleading; or

8 (c) To engage in any transaction, practice, or course  
9 of business which operates or would operate as a fraud or  
10 deceit upon any person

11 Section 8. Subsections (3) and (4) of section 517.311,  
12 Florida Statutes, are renumbered as subsections (4) and (5),  
13 respectively, and a new subsection (3) is added to said  
14 section to read:

15 517.311 False representations; deceptive words;  
16 enforcement.--

17 (3) It is unlawful and a violation of this chapter for  
18 any person in connection with the offer or sale of any  
19 investment to obtain money or property by means of:

20 (a) A misrepresentation that the investment offered or  
21 sold is guaranteed, sponsored, recommended, or approved by the  
22 state or any agency or officer thereof or by the United States  
23 or any agency or officer thereof; or

24 (b) A misrepresentation that such person is sponsored,  
25 recommended, or approved, or that such person's abilities or  
26 qualifications have in any respect been passed upon, by the  
27 state or any agency or officer thereof or by the United States  
28 or any agency or officer thereof.

29 Section 9. Each section which is added to chapter 517,  
30 Florida Statutes, by this act is repealed on October 1, 1990,

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1 and shall be reviewed by the Legislature pursuant to s. 11 61,  
2 Florida Statutes.  
3           Section 10. This act shall take effect upon becoming a  
4 law.  
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