1989

Session Law 89-024

Florida Senate & House of Representatives

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| S 1342 GENERAL BILL/CS/1ST ENG by Governmental Operations; Gordon (Similar CS/H 1338) |
| Security Broker/Bond Underwriter: provides procedures for securities broker or bond underwriter that has been convicted or pleaded nolo contendere to fraud to be requalified to do business with state. Amends 215.684. Effective Date: 05/24/89. |
| 04/11/89 SENATE Filed |
| 04/14/89 SENATE Introduced, referred to Governmental Operations -SJ 170; On Committee agenda—Governmental Operations, 04/18/89, 3:45 pm, Room-H-(428) |
| 04/18/89 SENATE Comm. Report: CS by Governmental Operations, placed on Calendar -SJ 199 |
| 04/25/89 SENATE CS read first time -SJ 203 |
| 05/09/89 SENATE Placed on Special Order Calendar -SJ 275; CS passed as amended; YEAS 31 NAYS 0 -SJ 283; Immediately certified -SJ 283 |
| 05/09/89 HOUSE In Messages |
| 05/10/89 HOUSE Received, placed on Calendar -HJ 446; Substituted for CS/HB 1338 -HJ 446; Read second time; Read third time; CS passed; YEAS 115 NAYS 0 -HJ 446 |
| 05/11/89 HOUSE Ordered enrolled -SJ 317 |
| 05/18/89 HOUSE Signed by Officers and presented to Governor -SJ 378 |
| 05/24/89 HOUSE Became Law without Governor's Signature; Chapter No. 89-24 -SJ 479 |

**NOTES:** Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
I. SUMMARY:

A. Present Situation:

Section 215.84, F.S., enacted in 1985 by ch. 85-165, L.O.F., prohibits any state agency from engaging any securities broker or bond underwriter that has been convicted, or has plead nolo contendere to, a crime of fraud in state or federal court, for a period of 2 years from the date of the conviction. The statute is self-executing, does not provide for a centralized list of disqualified brokers or underwriters, nor does it provide a specific procedure for contesting or administering the disqualification.

Chapter 517, F.S., provides for the regulation of securities brokers, bond underwriters, and related professionals by the Department of Banking and Finance. An applicant for registration must provide detailed personal information, including among other things a statement of financial condition and fingerprints, and must identify any conviction of, or plea of nolo contendere to, any criminal offense, or commission of any act which under s. 517.161, F.S., which would be grounds for refusal of an application. Renewal of registration, as provided in s. 517.12, F.S., is required yearly. In addition, Rule 3E-600.13, F.A.C., requires that an applicant or registrant must notify the department of the filing of civil, administrative, or criminal charges against him relating directly or indirectly to securities dealings, or which involve a breach of fiduciary duty. Pursuant to s. 517.1205, F.S., 1988 Supp., a finding of good moral character by the Comptroller, which is a requirement for registration, is precluded by a determination that the applicant may be denied registration on grounds provided by law.

Section 517.111, F.S., provides for the department to suspend or revoke the registration of any security if, among other things, the issuer engages in fraudulent transactions. Section 517.161, F.S., provides that the department may deny, revoke, restrict, or suspend registration of a dealer upon a number of findings, which include a registrant being convicted of or pleading nolo contendere to any criminal offense, being the subject of pending criminal charges, having an unfavorable judgment rendered against him in a civil action involving fraud, misrepresentation, or deceit, making false statements in an application for registration, and violating any rules or orders made under ch. 517, F.S. An applicant for registration is permitted to reapply. Any order of suspension or restriction must be made after a hearing if a hearing is requested by the registrant. When the department determines that it intends to deny an application or revoke registration, it must enter a final order with its findings on the register of dealers and associated persons.
Any person aggrieved by a final order of the department is entitled to review of the order as provided in ch. 120, F.S., the Administrative Procedure Act. Administrative hearings for parties whose substantial interests have been determined by an agency are provided for in s. 120.57, F.S., and judicial review of final orders is contemplated by s. 120.68, F.S.

B. Effect of Proposed Changes:

A procedure would be established for requalifying a securities broker or bond underwriter to do business with the state following disqualification for conviction of or plea of nolo contendere to fraud in a federal or state court.

Upon notification that a person or firm has been convicted of or entered a plea of nolo contendere to fraud, the Comptroller would be required to provide notice to the person or firm of the Comptroller's intent to disqualify the person or firm, which must state that the person or firm is considered a disqualified securities broker or bond underwriter; that a state agency may not enter into a contract for new business with such person or firm for a period of 2 years; that the person or firm has rights under s. 120.57, F.S.; and that the person or firm may petition to mitigate the duration of the disqualification pursuant to criteria provided in the act, which the person or firm may request to be considered as a part of an administrative hearing under s. 120.57, F.S.

The Comptroller would be permitted to mitigate the period of disqualification based upon: a) the nature and details of the crime; b) the degree of culpability; c) the prompt or voluntary payment of damages or penalty as a result of the conviction and disassociation from any other person or firm involved in the crimes of fraud; d) the extent of the cooperation with state or federal investigating authorities; e) prior or future self-policing by the person or firm to prevent crimes of fraud; f) reinstatement or clemency in any jurisdiction in relation to the crime at issue in the proceeding.

The Comptroller would have sole discretion to mitigate the duration of the disqualification based upon the established criteria. The Comptroller could impose a period of disqualification for any period of time of up to 2 years. A person or firm denied mitigation by the Comptroller would be permitted to again file for mitigation for the same offense no sooner than 9 months after the denial.

In addition and apart from the procedure for mitigation of the disqualification period, a firm or person would be entitled to petition the Comptroller for consideration of termination of the disqualification upon appellate court reversal of the conviction or upon the person or firm being pardoned for the crime.

It would be expressly provided that preexisting rights and obligations under current contracts or other arrangements would not be affected by a subsequent conviction, plea, or disqualification.

Although there would be specified exceptions, the act would be the sole authorization for determining a person or firm's eligibility to do business with the state, after having been convicted or pleading nolo contendere to the crime of fraud. The act would not affect, however, the authority granted to the Comptroller to revoke or suspend the license of a securities dealer or bond underwriter affected by the act.
II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

Additional administrative costs would be incurred by the Department of Banking and Finance in considering requests for mitigation, and in participating in the required hearings. Because the number of requests for mitigation and hearings that would be forthcoming under the new procedure cannot be known, no specific additional costs are quantifiable.

III. COMMENTS:

It is not clear whether, under the new language, a convicted dealer would be disqualified at the time the Comptroller issues notice of intent to disqualify, or when an order of disqualification is entered. The current statute, which would remain intact, would continue to provide that the disqualification runs from the time of conviction. Thus, there could be conflicting interpretations of when the period of disqualification begins to run. In a contractual services bid situation, a convicted registrant could argue that he is not disqualified to do business with the state until the Comptroller issues his notice of intent to disqualify or, alternatively, until the entry of an order of disqualification. Competing bidders could argue that the disqualification begins at the time of conviction, however. The internal conflicts in the act would offer the agency letting the bid no guidance in resolution of the dispute.

Additionally, the only language that speaks to the duration of the disqualification is existing language which provides that the period of disqualification ends 2 years from the date of conviction or the plea of nolo contendere, regardless of the time the period of disqualification begins.

The procedure established to put in motion, contest, or mitigate the disqualification appears to be duplicative of any administrative review procedure available to a person or entity prior to the time a conviction is entered or plea of nolo contendere is made. According to the department, its disciplinary proceedings usually take place prior to the time of the onset or disposition of criminal proceedings. The bill would require administrative proceedings to be also authorized following conviction or a nolo contendere plea, however.

Additionally, in the proceedings available to a person or entity as provided in ch. 517, F.S., under the Administrative Procedure Act, mitigation of disciplinary or other penalties may be considered. According to the department, sometimes the only issue at an administrative hearing conducted by the department under current law is the issue of mitigation of penalties. The only penalty that the department could not waive at that time would be the prohibition by s. 215.684, F.S., of doing business with the state, which by its terms appears to be self-executing at the time of conviction or plea. Under the added provisions in the bill, the Comptroller would not be able to issue the notice and address the issue of mitigation until the time of actual conviction or plea. This would afford a second point of entry to administrative proceedings for those for whom mitigation of all applicable penalties under ch. 517, F.S., had been considered at the administrative proceedings initiated prior to disposition of the criminal proceedings.

IV. AMENDMENTS:

None.
Removes the needs of the state in procuring financial services as a criterion for determining whether to mitigate the period of disqualification.

Excepts other provisions of law for crimes of fraud in the transaction of business with any public entity or agency or political subdivision of another state or the United States to the act's status as sole authorization for determining disqualification as a securities broker or bond underwriter with the state.

Clarifies that the act does not affect the authority granted the Comptroller under chapter 517, F.S., to revoke or suspend the license of securities dealers or bond underwriters.

Committee on Governmental Operations

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)
I. SUMMARY:

A. SHORT SUMMARY:

Section 215.684, Florida Statutes, provides that the state cannot engage the services of a person or firm as a securities broker or bond underwriter that has been convicted of or entered a plea of nolo contendere to a crime of fraud in federal or state court for two years from the date of conviction. This section does not specifically require a particular agency action to effect the prohibition on engaging the services of such person or firm, and does not provide procedures for administering the prohibition.

The bill would amend s. 215.684, Florida Statutes, to establish specific procedures for disqualifying a person or firm that has been convicted of, or pleaded guilty or nolo contendere to, fraud from doing business with the state as a securities broker or bond underwriter. The bill would also provide the procedures by which the Comptroller could decide whether or not to mitigate the duration of a disqualification.

B. PRESENT SITUATION:

Section 215.684, Florida Statutes, provides that the state cannot engage the services of a person or firm as a securities broker or bond underwriter that has been convicted of or entered a plea of nolo contendere to a crime of fraud in federal or state court. The prohibition exists for a period of two years from the date of conviction. This section further provides that these provisions only apply to convictions or pleas entered after July 1, 1985.
Chapter 517, Florida Statutes, known as the "Florida Securities and Investor Protection Act," provides for the regulation of securities brokers, bond underwriters, and other securities dealers and agents by the Department of Banking and Finance. In order to sell or offer for sale securities in the state, these persons must be registered with the department pursuant to s. 517.12, Florida Statutes, and must file a written application with the department to obtain registration. As part of an application, each applicant is required to provide information concerning any injunction or administrative order issued against the applicant by a state or federal agency involving any aspect of the securities business, or any conviction of, or plea of nolo contendere to, a criminal offense or commission of any act by the applicant which would be grounds for refusal of an application. Department rules also require applicants or registrants to notify the department of civil, administrative, or criminal charges filed against an applicant or registrant that relate to securities dealings or breaches of fiduciary trust. Annual registration is required prior to selling securities to state residents or nonresidents from offices within the state.

Under s. 517.161(1), Florida Statutes, the registration of a securities dealer may be denied, revoked, restricted, or suspended if the department determines that an applicant or registrant has, among other things: (1) violated any provision of chapter 517, Florida Statutes; (2) has been guilty of a fraudulent act in connection with the sale of securities; (3) has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime against state or federal law relating to registration as a dealer, relating to an application for registration, or involving moral turpitude or fraudulent or dishonest dealing; or (4) has had an adverse final judgment entered in a civil action on grounds of fraud, embezzlement, misrepresentation, or deceit.

Registration as a securities dealer may be denied, suspended, or restricted if an applicant or registrant is charged, in a pending enforcement action or criminal prosecution, with any conduct that would meet any of the criteria necessary for denial or revocation of registration. An order of the department suspending or restricting the registration of a securities dealer takes effect only after a hearing if such hearing is requested by the registrant, unless the department finds grounds for a summary suspension, restriction, or limitation. Any person aggrieved by a final order of the department may have the order reviewed under the state Administrative Procedures Act (chapter 120, Florida Statutes).

Section 215.684, Florida Statutes, does not specifically require a particular agency action to effect the prohibition on the state from engaging the services of a securities broker or bond underwriter who has been convicted of, or has pleaded nolo contendere to, a crime of fraud. This section also does not provide procedures for administering the prohibition or provide specific procedures by which a broker or underwriter may contest.
the prohibition. A person whose substantial interests are affected by the prohibition would still have the right to a hearing pursuant to s. 120.57, Florida Statutes, even though it is not clear what agency action would provide a point of entry for such person into the hearing process.

C. EFFECT OF PROPOSED CHANGES:

The bill would amend s. 215.684, Florida Statutes, to establish specific procedures for disqualifying a person or firm that has been convicted of, or has pleaded guilty or nolo contendere to, fraud from doing business with the state as a securities broker or bond underwriter.

The bill would require the Comptroller to issue a notice of intent to take action to disqualify a person or firm as a securities broker or bond underwriter when the Comptroller is notified under chapter 517, Florida Statutes, that the person or firm has been convicted of or has pleaded guilty or nolo contendere to fraud. The notice would contain several statements, including statements providing: (1) that such person or firm is a disqualified securities broker or bond underwriter; (2) that a state agency may not contract with the person or firm as a securities broker or bond underwriter for any new business for a period of two years; (3) that the substantial rights of such person or firm as a securities broker or bond underwriter are being affected and that the person or firm has the rights accorded pursuant to s. 120.57, Florida Statutes; and (4) that the person or firm may petition to mitigate the duration the disqualification, based on certain criteria specified in the bill, and may request that such mitigation be considered as part of a hearing under s. 120.57, Florida Statutes.

The bill would provide the criteria that the Comptroller would use in deciding whether or not to mitigate the duration of a disqualification. These circumstances include: (1) the nature and details of the particular crime; (2) the degree of culpability of the person or firm; (3) prompt or voluntary payment of damages or penalties resulting from the conviction or disassociation from any other person or firm involved in the crimes of fraud; (4) cooperation with state or federal investigation or prosecution of the crime of fraud; (5) self-policing by the person or firm to prevent crimes of fraud; and (6) reinstatement or clemency in other jurisdictions in relation to the particular crime.

The Comptroller has the sole discretion to mitigate the duration of a disqualification and can specify the duration of disqualification up to a period of two years from the date of the person's or firm's conviction or plea. If the Comptroller refuses to mitigate the duration of the disqualification, the person or firm may refile for mitigation no sooner than nine months after the Comptroller's denial. The person or firm may petition the Comptroller to end a disqualification if the conviction of the person or firm is reversed by an appellate court or if the person or firm is pardoned.
The bill would provide that a person's or firm's conviction of or a plea of nolo contendere to fraud, or a disqualification from providing services, does not affect any rights or obligations under any contracts, franchises, or other binding agreements predating the conviction, plea, or disqualification.

The bill provides that a person or firm requesting a hearing under s. 120.57, Florida Statutes, may consent to a disqualification beginning prior to the disposition of the proceedings, in which case the period of disqualification runs from the agreed upon date.

The bill provides that except when otherwise provided by law for crimes of fraud with respect to transactions of business with any public entity or with an agency or political subdivision of any other state or the federal government, the provisions of the bill would be the sole authorization for determining when a person or firm convicted of or having pleaded guilty or nolo contendere to a crime of fraud may not be engaged to provide services as a securities broker or bond underwriter with the state. The bill provides that nothing in the bill is to be construed to affect the authority of the Comptroller under chapter 517, Florida Statutes, to revoke or suspend the license of a securities broker or bond underwriter.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 215.684, Florida Statutes; provides procedures for notice, hearings, and mitigating criteria relating to the disqualification of persons or firms that have been convicted of, or have pleaded guilty or nolo contendere to, a crime of fraud, from engaging with the state to provide services as securities brokers or bond underwriters.

Section 2 -- Provides that except as otherwise provided by law for public contracting crimes of fraud, the provisions of the bill provide the sole authorization for determining when a person or firm convicted of or having pleaded guilty or nolo contendere to a crime of fraud may not be engaged to provide services as a securities broker or bond underwriter with the state; provides that nothing in the bill is to be construed to affect the authority of the Comptroller under chapter 517, Florida Statutes, to revoke or suspend the license of a securities broker or bond underwriter.

Section 3 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate.
2. Recurring or Annualized Continuation Effects:
   Indeterminate.

3. Long Run Effects Other Than Normal Growth:
   Indeterminate.

4. Appropriations Consequences:
   Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   Indeterminate.

2. Direct Private Sector Benefits:
   Indeterminate.

3. Effects on Competition, Private Enterprise, and Employment Markets:
   Indeterminate.

D. FISCAL COMMENTS:

The Department of Banking and Finance may incur additional costs in considering requests for mitigation and in conducting required hearings. The exact costs are not known since the number of requests and hearings cannot be determined at this time. The private sector may be affected by the provisions of the bill if securities brokers or bond underwriters would normally be benefiting from providing services to the state are prohibited from doing so under the provisions of the bill.

III. LONG RANGE CONSEQUENCES:

The bill is not addressed by the goals and policies of the State Comprehensive Plan.
IV. COMMENTS:

The bill is not addressed by the mission statements of the House Governmental Operations Committee or the Policy Statement of the 1989-1990 Legislative Issues Conference.

The Department of Banking and Finance under chapter 517, Florida Statutes, may currently be able to take actions similar to those authorized in the bill.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

David Hawley

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

Barry Kling

APPROPRIATIONS:
Prepared by:

Staff Director: