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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date February 2, 1998 Revised: 02/03/98

Subject: Securities Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Johnson <i>JM</i>	Deffenbaugh <i>DD</i>	BI	Fav/2 amendments
2.			WM	
3.				
4.				
5.				

I. Summary:

The bill provides requirements for the Florida Securities Investment Protection Act, (ch 517, F.S.), to conform to the federal National Securities Markets Improvement Act of 1996. The federal act preempts a state from the regulation of federal covered securities and federal covered advisers. A federal covered adviser that does not have a physical presence in Florida would not be subject to registration fees for branch offices or their representatives, under the provisions of the federal Act. In Florida, the estimated negative fiscal impact of the federal act in lost revenues for branch offices and representatives, not located in Florida, is approximately \$150,000 on an annual basis.

However, the federal act authorizes a state to require a federal covered adviser to file a notice and fee. The bill requires such notification and a \$200 fee, which replaces the current \$200 registration fee.

The bill authorizes the Department of Banking and Finance to establish procedures for the electronic filing of fees and documents for securities registration, applications for securities offering, and applications for the registration of dealers, investment advisers, branch offices, and agents.

The bill also authorizes and appropriates \$75,000 from the Anti-Fraud Trust Fund to the department for the purpose of improving the public's awareness and understanding of prudent investing and funding the investigation and prosecution of administrative action arising under the provisions of ch. 517, F.S.

The bill substantially amends the following sections of the Florida Statutes: 517.021, 517.051, 517.061, 517.081, 517.082, 517.12, 517.1205, 517.131, 517.161, 517.302, and 517.311 and creates 517.1201

## II. Present Situation:

### State Law

Pursuant to chapter 517, F.S., the Department of Banking and Finance is responsible for the regulation and registration of broker dealers, associated persons, investment advisors, and the registration of securities.

Generally, under chapter 517, F.S., a security must be registered with the department prior to the security being offered or sold in Florida. Section 517.051, F.S., enumerates those securities which are not required to be registered with the department. Examples of exempt securities include: securities issued or guaranteed by the United States government, any state, or a national bank, and federal covered securities. The section also exempts notes, drafts, bills of exchange, or banker's acceptance with a unit amount of \$25,000 or more, which is used in current operational business transactions and which have a maturity of 9 months or less. Section 517.081, F.S., specifies the procedures for registration including the documents required and the payment of a \$1000 registration fee

Section 517.061, F.S., enumerates certain transactions which are exempted from the registration requirements of the chapter. The exemption is self-executing, therefore not requiring any filing with the department prior to claiming such exemption. Examples of the exempt transactions include a judicial sale, certain sales to banks, and the issuance of notes or bonds in connection with real property.

Section 517.082, F.S., provides that securities offered or sold under the provisions of federal securities laws are generally entitled to registration by notification. Registration by notification occurs when the security has been registered with the Securities and Exchange Commission and the department is notified that the security will be sold in Florida

Section 517.12, F.S., generally requires all dealers, issuers, and associated persons to register before selling or offering for sale from any location in this state or to any person located in this state. Likewise, investment advisors must register prior to engaging in business in Florida or rendering advice to persons located in this state. This section also sets forth the requirements for the registration of associated persons, dealers, investment advisors, and branch offices in Florida, prior to offering to sell securities in Florida. A dealer is typically a person who engages as a broker or principal in the business of dealing or trading securities issued by another person. An investment advisor is typically a person who engages in the business of advising others as to the advisability of investments in securities. Currently, the definition of an investment advisor, as set forth in s. 517.021, F.S., exempts a licensed attorney or a certified public accountant whose performance of such services is solely incidental to the practice of the respective profession

Section 517.131, F S., establishes the Securities Guaranty Fund (Fund), provides for its funding, and provides for the disbursement of funds to individuals. The Fund was established to pay individuals who have received a judgment for monetary damages caused by the acts of a dealer, investment adviser, or associated person. The individual must have unsuccessfully attempted to collect the amount of judgment, that is, the individual who makes a claim against the Fund must still be owed money in connection with the judgment.

Pursuant to s. 517.141, F S., generally the maximum an individual claimant may receive from the Fund is capped at \$10,000 and the aggregate amount all claimants may receive from the Fund is \$100,000 (if the amount claimed is greater than \$100,000, the amount per claimant will be prorated). For example, a claimant may obtain a judgment against an associated person for \$100,000, and only be able to collect \$50,000 from the associated person. This leaves a \$50,000 difference that the claimant may file for reimbursement from the Fund. However, the claimant would only be eligible to receive up to \$10,000, assuming the claimant qualified under the statutory provisions and the number of other claimants did not exceed nine.

In 1996, s. 517.131(1), F S. was amended to revise the amount of assessment fees which are deposited into the Fund to 20 percent for all dealers and investment advisers, and 10 percent of all assessment fees collected from associated persons. The maximum balance in the Fund at which the collection of the assessment fee would cease being deposited into the Fund was increased from \$250,000 to \$1,500,000.

Section 517.161, F S., authorizes the department to deny or revoke any registration granted for a dealer, investment adviser, associated person, or branch office if the department determines that the applicant or registrant has been the subject of a violation of any federal or state securities or commodities law or any rule or regulation ordered by a state or federal agency regulating banking, insurance, finance, real estate, mortgage brokers, or other related or similar industries.

Section 517.302, F S., provides that any amounts assessed as costs of investigation and prosecution under this subsection are required to be deposited in the Anti-Fraud Trust Fund. Such funds, when authorized by appropriation, may be used for investigation and prosecution of civil and criminal actions arising under the provisions of ch. 517, F.S.

Section 517.311, F.S., prohibits any person registered or required to be registered by the department to misrepresent that such person has been approved by the state or any agency or officer of the state or the United States or agency or officer of the United States.

### **Federal Law**

Federal law requires all securities to be registered with the Securities and Exchange Commission (SEC) unless the securities are specifically exempted under 15 USC s. 77c or the transactions are exempt under 15 USC s. 77d. Those securities required to be registered will undergo a review by the SEC to determine if the disclosures adequately protect the interests of the public.

In 1996, the U.S. Congress enacted the National Securities Markets Improvement Act. The purpose of the legislation is to modernize certain important aspects of the regulatory scheme governing capital markets, including the respective responsibilities of the federal and state authorities over the securities markets, and to eliminate the costs and burdens of duplicative and unnecessary regulation while maintaining important investor protections

This Act preempts the states' authority to require the registration of covered securities advisers. Covered securities are defined by federal law to include those securities listed or authorized for listing on certain national securities exchanges, securities issued by a registered investment company, securities offered to qualified purchasers (as defined by the SEC). The federal law allows the states to retain the authority to investigate and bring enforcement actions with respect to fraud or deceit in connection with securities or securities transactions. The states also retain the authority to collect filing and registration fees in effect on October 11, 1996

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 517.021, F.S., to clarify the definition of an associated person, with respect to a dealer or an investment adviser, as well as federal covered adviser. An associated person, with respect to a federal covered adviser, is any person who is an investment adviser representative and who has a place of business in Florida, as such terms are defined in Rule 203A-3 of the SEC adopted under the Investment Adviser Act of 1940

The section also defines the term, a "federal covered adviser" to mean a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940 or who is excluded from the definition of an investment adviser under s. 202(a)(11) of the Investment Advisers Act of 1940, as of July 9, 1997. The term, "federal covered adviser," does not include any person who is excluded from the definition of an investment adviser under subparagraphs (12)(b)1.-8.

The section is also amended to specify that the term, an investment adviser, does not include a federal covered adviser

**Section 2.** Amends s. 517.051, F.S., to exclude from registration requirements any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940 and provides that Section 6(c) of the federal Philanthropy Protection Act of 1995 would not preempt any provision of this chapter. As a result, Florida preserves its right to require charitable organizations to register with the department to sell their securities in Florida

**Section 3.** Amends s. 517.061, F.S., to exempt certain securities transactions by a registered dealer from the registration provisions of s. 517.07, F.S., the offer or sale of securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the federal Securities Act of 1933 and is not subject to any registration or filing requirements under this act. The department is authorized to deny the exemption with reference to any particular security, other

than a federal covered security. A nonissuer transaction by a registered associated person of a registered dealer and any resale transaction by a sponsor of an unit investment trust is exempt from this section if, at the time of the transaction, certain conditions are met.

**Section 4.** Amends s. 517.081, F.S., to authorize the department to establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the department with the data required by this section for securities registration and eliminates an obsolete reference.

**Section 5.** Amends s. 517.082, F.S., to authorize the department to establish by rule procedures for depositing fees and filing of documents electronically for securities registration by notification and to eliminate an obsolete reference.

**Section 6.** Amends s. 517.12, F.S., to prohibit the registration of any person as an associated person of an investment adviser unless the investment adviser with which the applicant seeks registration is in compliance with the notice filing requirements specified in s. 517.1201, F.S., or is lawfully registered with the department pursuant to ch. 517, F.S.

The department is authorized to establish by rule, procedures for depositing fees and filing documents by electronic means for dealers, associated persons, investment advisers, and branch offices, provided such procedures provide the department with the information and data required within this section.

The department is authorized to require, in general, that all dealers comply with net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. Securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, are exempted from this provision. The department is authorized to require, by rule, a dealer to file with the department any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

The department is authorized to require securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities to maintain a minimum net capital. An investment adviser that maintains its principal place of business in another state is exempt from this requirement, provided such investment adviser is registered in the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

Every federal covered adviser is required to promptly file with the department notice of the termination of any associated person registered for such dealer or investment adviser in Florida.

**Section 7.** Creates s. 517.1201, F.S., to establish notice filing requirements for federal covered advisers. An individual engaging in business in Florida as a federal covered adviser is required to file with the department a copy of the documents that have been filed or that are required to be

filed with the Securities and Exchange Commission, with a consent to service of process and a filing fee of \$200. A notice of filing is effective upon receipt. Subsequent renewal fees are \$200. If the federal covered adviser has not renewed a notice filing prior to its expiration, the department is authorized to impose a \$200 late payment fee. The department is authorized to require, by rule, that the federal covered adviser file any amendments filed or required to be filed by the Securities and Exchange Commission.

**Section 8.** Amends s. 517.1205, F.S., to specify that the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved by the department.

**Section 9.** Amends s. 517.131, F.S., to require that a portion of the federal covered advisers fees be allocated to the Securities Guaranty Fund.

**Section 10.** Amends s. 517.161, F.S., to provide additional grounds for the department to deny registration under s. 517.12 or to revoke, restrict, or suspend any registration granted by the department. These grounds include: violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

**Section 11.** Amends s. 517.302, F.S., to authorize the department to use funds deposited in the Anti-Fraud Trust Fund for the investigation and prosecution of administrative actions arising under the provisions of chapter 517, F.S. The department is also authorized to use such funds to improve the public's awareness and understanding of prudent investing.

**Section 12.** Amends s. 517.311, F.S., to prohibit any person subject to the notice requirements under any section of ch. 517, F.S., to misrepresent that such person has been recommended or approved by the state or any agency or officer of the state or by the United States or any agency or officer of the United States.

**Section 13.** Appropriates \$75,000 from the Anti-Fraud Trust Fund to the department, for fiscal year 1998-99, to be used to improve the public's awareness and understanding of prudent investing.

**Section 14.** Provides that the Act will take effect upon becoming a law.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions

None.

**B Public Records/Open Meetings Issues**

None.

**C Trust Funds Restrictions**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

As a result of the implementation of the federal act, which is codified in state law by this bill, fees for branch offices and representatives of federal covered advisers that do not have a physical location in Florida are eliminated. The department has provided the following estimated impact:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-2000</u>
Federal covered advisers branch offices \$100 per office	(\$7,000) 70 offices	(\$7,700) 77 offices	(\$8,470) 85 offices
Federal covered advisers agents \$40 per agent	(\$144,000) 3600 agents	(\$158,400) 3960 agents	(\$174,240) 4356 agents

**B Private Sector Impact.**

Due to the enactment of the federal law and the subsequent conforming changes in the Florida law provided by this bill, federal covered advisers will not be required to register and pay fees for branch offices and agents with the department, if they do not maintain a physical location in Florida. However, federal covered advisers will be required to file a notice and a \$200 fee, which replaces the current \$200 registration fee

**C Government Sector Impact.**

The bill appropriates \$75,000 from the Anti-Fraud Trust Fund to the department for the purpose of improving the public's awareness and understanding of prudent investing and for the costs of investigating and prosecuting administrative actions arising under the provisions of ch. 517, F.S



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Banking and Insurance

Excludes persons presently not subject to federal regulation from notice requirements of the department.

#2 by Banking and Insurance:

Clarifies that federal covered advisers, not investment advisers, are subject to the notice filing provisions under s. 517.1201, F.S

STORAGE NAME: h3239z.fs  
DATE: May 27, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

**BILL #** HB 3239, 2nd Engrossed  
**RELATING TO** Securities Transactions  
**SPONSOR(S)** Representatives Thrasher, Lippman and others  
**COMPANION BILL(S):** SB 510 (s)  
**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**  
(1) FINANCIAL SERVICES YEAS 10 NAYS 0  
(2)  
(3)  
(4)  
(5)

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I. FINAL ACTION STATUS

HB 3239, 2nd Engrossed, passed the Senate 32-0 on April 17, 1998, and the House 118-0 on April 29, 1998. It became law without the Governor's signature on May 24, 1998. Chapter 98-221, Laws of Florida.

II. SUMMARY:

In general, HB 3239 conforms state law to the National Securities Markets Improvement Act enacted by Congress in 1996, as follows.

- A "federal covered investment adviser" would no longer be required to register with the Department of Banking and Finance (the department). A "federal covered investment adviser" handles more than \$25 million in assets.
- The department would retain authority to investigate fraud or deceit and bring enforcement actions, but would no longer regulate "federal covered investment advisers."
- Any "federal covered investment adviser" would not be required to register their branch offices or their agents who do not have a physical presence in the state.

As a result of HB 3239, a "federal covered investment adviser" would be required to file notice with the department and pay a filing fee. The department would be authorized to establish procedures by rule for depositing fees and filing documents electronically. Charitable organizations that offer securities for sale would continue to be required to register with the department.

As part of this bill of HB 3239, \$75,000 would be appropriated from the Anti-Fraud Trust Fund to be used to improve the public's awareness of prudent investing.

III SUBSTANTIVE RESEARCH:

A PRESENT SITUATION

The National Securities Markets Improvement Act

In 1996, the U S Congress passed the National Securities Markets Improvement Act (NSMIA). The NSMIA effected a number of revisions to federal securities law which impacted the regulation of securities and investment advisers by the Florida Department of Banking and Finance (the department) These include the following changes

- preempting state regulation of "federal covered investment advisers" managing more than \$25 million in assets;
- permitting states to require "federal covered investment advisers" to file notice with state regulatory authorities,
- limiting the ability of the state to impose regulatory standards exceeding those of the state where the investment adviser maintains his or her principle place of business, and
- preempting the authority of the state to require the registration of a transaction involving "federal covered securities" by a registered dealer.

Congress did not alter existing state authority to investigate fraud or deceit and bring enforcement actions against both federal covered and non-covered investment advisers

The department implemented many other necessary changes through rulemaking and achieved compliance with others through legislation enacted during the 1997 legislative session

Prior to the passage of the NSMIA, Florida Statutes required a "federal covered investment adviser" to register with the department Included in registration documents were the name and address of the applicant, articles of incorporation (if applicable), names of associated persons to be employed, the names of any officers or partners, and any character references. An investment adviser is also required to be found to be of "good repute and character" by the department and must demonstrate knowledge of the law and the industry through testing requirements. The department required a registration fee of \$200 According to the department, there are 1,905 investment advisers registered in Florida. Of that 1,905, the department estimates that approximately 743, or 39 percent, are "federal covered investment advisers "

After the enactment of the NSMIA, the state can no longer require "federal covered investment advisers" to register with the department However, states do have the discretion to require "federal covered investment advisers" to file notice with state regulators (i.e , the department) before the "federal covered investment adviser" is eligible to conduct business in the state.

Before the passage of the NSMIA, the department required the registration of associated persons of "federal covered investment advisers" even if these associated persons did not have a place of business in the state Documentation required for registration

included the name and address of the applicant, residential and employment history, and any character references. Associated persons are also required to be found of "good repute and character" by the department and must demonstrate a knowledge of the law and industry through testing requirements. The department required a registration fee of \$40. After the passage of the NSMIA, the state can no longer require associated persons of "federal covered investment advisers" who are not located in the state to register with the department.

#### Depositing Fees and Filing Documents Electronically

The department has no express authority to allow dealers, associated persons, or investment advisers to deposit registration fees and file registration documents electronically.

#### Anti-Fraud Trust Fund

The Anti-Fraud Trust Fund exists within the department to be used for investigation and prosecution of civil and criminal actions arising under ch. 517, F.S. According to the department, as of November 30, 1997, the balance of the trust fund was \$2,055,663. During the 1997-1998 fiscal year, the Legislature appropriated \$399,532 to the department.

#### The Philanthropy Protection Act of 1995

Currently, the state exempts the securities of charitable organizations from the registration requirements of s. 517.07, F.S. Although the securities are themselves exempt, they are required to be sold by a registered dealer pursuant to s. 517.12(2), F.S. In the Philanthropy Protection Act of 1995, the U.S. Congress exempted charitable organizations from having to comply with state registration requirements, unless a state has adopted specific language to require charitable organizations to register as broker-dealers.

### B EFFECT OF PROPOSED CHANGES:

#### The National Securities Markets Investment Act of 1996

HB 3239 would implement a number of changes in state securities law in response to the NSMIA. These include the following:

- A "federal covered investment adviser" would no longer be required to register with the department, however, the department would require these investment advisers to submit a notice filing. This notice would consist of a copy of those documents that are required to be filed with the Securities and Exchange Commission, along with a processing and filing fee of \$200. In conforming to NSMIA, Florida law would be amended to preclude the department from requiring a "federal covered investment adviser" to register its agents unless they have a physical presence in the state. The department would also retain its authority to investigate fraud or deceit on the part of those subject to notice requirements. Any person who is the associated person of an investment

adviser would be prohibited from registering with the department unless the investment adviser has either registered or filed notice with the department

- Transactions by a registered dealer involving a "federal covered security" would be exempt from the registration requirements of s. 517.07, F.S.

#### Depositing Fees and Filing Documents Electronically

If the department chose to exercise the authority to adopt rules to allow dealers, associated persons and investment advisers to file electronically, then dealers, associated persons and investment advisers could deposit registration fees and registration documents electronically.

#### Anti-Fraud Trust Fund

The permitted uses of the monies in the Anti-Fraud Trust Fund would be broadened to include costs associated with the investigation and prosecution of administrative actions arising from the provisions of ch. 517, F.S., instead of just civil and criminal actions as is now the case. A sum of \$75,000 will be appropriated from the Anti-Fraud Trust Fund to be used to improve the public's awareness of prudent investing.

#### The Philanthropy Protection Act of 1995

Under the Philanthropy Protection Act of 1995, the state would be required to adopt specific language to require charitable organizations to register with the department to offer securities for sale in the state. The state would maintain the authority to require charitable organizations to register with the department.

Additional changes are described in the "Section By Section" research (Section E) of this document.

### C. APPLICATION OF PRINCIPLES:

#### 1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly,

- (1) any authority to make rules or adjudicate disputes?

Yes. The department will make rules regarding procedures for depositing fees and filing documents electronically.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes "Federal covered investment advisers" will now be required to file notice with the department, but will no longer be required to register with the department pursuant to the changes effected by the enactment of NSMIA.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

## 2 Lower Taxes

- a -- Does the bill increase anyone's taxes?

N/A

- b Does the bill require or authorize an increase in any fees?

N/A

- c Does the bill reduce total taxes, both rates and revenues?

N/A

- d - Does the bill reduce total fees, both rates and revenues?

N/A

- e Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility

- a Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom

- a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment

- a If the bill purports to provide services to families or children

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b Does the bill directly affect the legal rights and obligations between family members?

N/A

c If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D STATUTE(S) AFFECTED:

Amends ss 517.021, 517.051, 517.061, 517.081, 517.082, 517.12, 517.1205, 517.131, 517.161, 517.302, and 517.311, F.S.

Creates s 517.1201, F.S.

E SECTION-BY-SECTION RESEARCH.

**Section 1.** Amends s. 517.021, F.S., to expand the definition of "associated person" to include dealer or investment adviser. Defines "federal covered investment adviser." Exempts "federal covered investment adviser" from the definition of investment adviser

**Section 2.** Amends s. 517.051, F.S., to require charitable organizations to register with the department for a permit to sell securities.

**Section 3.** Amends s 517.061, F.S., to include an exemption for transactions by a registered dealer involving "federal covered securities" from the registration requirements of s 517.07, F.S. Exempts any nonissuer transaction by a registered



associated person of a registered dealer and any resale transaction by a sponsor of a unit investment trust from the registration requirements of s 517.07, F.S., if at the time of the transaction certain specified conditions are satisfied

**Section 4.** Amends s 517.081, F.S., to allow the department to establish procedures by rule to allow those registering securities with the department to deposit registration fees and file registration documents electronically. Removes an obsolete reference

**Section 5.** Amends s 517.082, F.S., removing an obsolete reference to the Investment Company Act of 1940. Allows the department to establish procedures by rule for depositing fees and filing documents electronically.

**Section 6.** Amends s 517.12, F.S., to prohibit the department from registering any person as an associated person of an investment adviser unless the investment adviser has either filed notice or registered with the state. Allows the department to establish procedures by rule for depositing fees and filing documents electronically. Requires all dealers, except certain securities dealers, to comply with the net capital and ratio requirements of the Securities Exchange Act of 1934.

**Section 7.** Creates s 517.1201, F.S., to require that any person who does business in this state as a "federal covered investment adviser" to file notice with the department. Providing for payment of \$200 filing fee and a \$200 annual renewal fee. Allows the department to establish procedures by rule for the electronic filing of documents and depositing of fees.

**Section 8.** Amends s 517.1205, F.S., to include "federal covered investment adviser" in the declaration of intent by the Legislature that the registration of associated persons required by law is specific to the securities dealer and investment adviser identified at the time the registration is approved

**Section 9.** Amends s 517.131, F.S., to include assessment fees for "federal covered investment advisers" as part of the 20 percent of revenues received as assessment fees that are required to be allocated to the Securities Guaranty Fund

**Section 10.** Amends s 517.161, F.S., authorizes the department to revoke, deny or suspend the registration of any dealer, investment adviser, associated person or branch office that has violated any rule or regulation of any national securities, commodities or options exchange or association

**Section 11.** Amends s 517.302, F.S., allowing funds deposited in the Anti-Fraud Trust Fund with the department to be used to improve "the public's awareness and understanding of prudent investing"

**Section 12.** Amends s. 517.311, F.S., to make it unlawful for "federal covered investment advisers" to make false representations as to their abilities or qualifications

**Section 13.** Effects for an appropriation of \$75,000 from the Anti-Fraud Trust Fund for fiscal year 1998-1999 to be used "to improve the public's awareness and understanding of prudent investing."

**Section 14.** Provides that this act shall take effect upon becoming law

IV FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1 Non-recurring Effects

For fiscal year 1998-1999, the bill would appropriate an additional \$75,000 to the Anti-Fraud Trust Fund to be used "to improve the public's awareness and understanding of prudent investing " According to the department, \$60,000 will be allocated for expenses and \$15,000 will be allocated for OPS

2. Recurring Effects.

N/A

3. Long Run Effects Other Than Normal Growth.

N/A

4. Total Revenues and Expenditures

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1 Non-recurring Effects:

N/A

2. Recurring Effects.

N/A

3. Long Run Effects Other Than Normal Growth

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1 Direct Private Sector Costs.

"Federal covered investment advisers" would be required to pay a \$200 notice fee, although they have been paying a \$200 registration fee. Therefore, one fee would be replaced by another of an equal amount

2 Direct Private Sector Benefits:

By conforming to federal law, confusion will be minimized from different statutory language. Also, through the public awareness campaign additional sources of information regarding prudent investing will be made available to the public.

3 Effects on Competition, Private Enterprise and Employment Markets

N/A

D. FISCAL COMMENTS

N/A

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A. APPLICABILITY OF THE MANDATES PROVISION

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY.

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

N/A

VI. COMMENTS:

N/A

VII AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

At its meeting on January 6, 1998, the Committee on Financial Services adopted one amendment to HB 3239. This amendment was subsequently adopted by the House and engrossed into the bill. The amendment would change an "or" to an "and" in the bill. This change would increase the number of conditions that must be met to exempt a nonissuer transaction and a resale transaction by a sponsor of a unit investment trust from the registration requirements of the department.

On April 17, 1998, the Senate adopted two amendments to HB 3239, and on April 29, 1998, the House concurred in those amendments.

Senate Amendment #1 would exempt a group of people from the definition of "federal covered adviser" in s 517.021, F.S. These people are exempt from the definition of "investment adviser" in s 202(a)(11) of the Investment Advisers Act of 1940, thus they are

not registered with the SEC. If this group were included in the definition of "federal covered adviser" in s. 517 021, F S , they would be required to file notice with the DBF This includes filing a copy of all of the documents that they file with the SEC, and they do not file any documents with the SEC.

Senate Amendment #2 would clarify that an associated person of a federal covered adviser or a federal covered adviser would not be able to engage in business in this state unless this person has either registered or filed notice with the DBF "Federal covered advisers" are required to file notice with the DBF

VIII SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES

Prepared by:

Legislative Research Director:

Meredith Woodrum Snowden

Stephen Hogge

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES

Prepared by:

Legislative Research Director:



Meredith Woodrum Snowden



Stephen Hogge

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date February 2, 1998 Revised \_\_\_\_\_

Subject Securities Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	Johnson <i>JH</i>	Deffenbaugh <i>DF</i>	BI	
2			WM	
3				
4				
5				

i. Summary:

The bill provides requirements for the Florida Securities Investment Protection Act, (ch. 517, F.S ), to conform to the federal National Securities Markets Improvement Act of 1996 The federal act preempts a state from the regulation of federal covered securities and federal covered advisers A federal covered adviser that does not have a physical presence in Florida would not be subject to registration fees for branch offices or their representatives, under the provisions of the federal Act. In Florida, the estimated negative fiscal impact of the federal act in lost revenues for branch offices and representatives, not located in Florida, is approximately \$150,000 on an annual basis

However, the federal act authorizes a state to require a federal covered adviser to file a notice and fee. The bill requires such notification and a \$200 fee, which replaces the current \$200 registration fee

The bill authorizes the Department of Banking and Finance to establish procedures for the electronic filing of fees and documents for securities registration, applications for securities offering, and applications for the registration of dealers, investment advisers, branch offices, and agents

The bill also authorizes and appropriates \$75,000 from the Anti-Fraud Trust Fund to the department for the purpose of improving the public's awareness and understanding of prudent investing and funding the investigation and prosecution of administrative action arising under the provisions of ch. 517, F S.

The bill substantially amends the following sections of the Florida Statutes: 517.021, 517.051, 517.061, 517.081, 517.082, 517.12, 517.1205, 517.131, 517.161, 517.302, and 517.311 and creates 517.1201.

## II. Present Situation:

### State Law

Pursuant to chapter 517, F.S., the Department of Banking and Finance is responsible for the regulation and registration of broker dealers, associated persons, investment advisors, and the registration of securities.

Generally, under chapter 517, F.S., a security must be registered with the department prior to the security being offered or sold in Florida. Section 517.051, F.S., enumerates those securities which are not required to be registered with the department. Examples of exempt securities include: securities issued or guaranteed by the United States government, any state, or a national bank, and federal covered securities. The section also exempts notes, drafts, bills of exchange, or banker's acceptance with a unit amount of \$25,000 or more, which is used in current operational business transactions and which have a maturity of 9 months or less. Section 517.081, F.S., specifies the procedures for registration including the documents required and the payment of a \$1000 registration fee.

Section 517.061, F.S., enumerates certain transactions which are exempted from the registration requirements of the chapter. The exemption is self-executing, therefore not requiring any filing with the department prior to claiming such exemption. Examples of the exempt transactions include: a judicial sale, certain sales to banks, and the issuance of notes or bonds in connection with real property.

Section 517.082, F.S., provides that securities offered or sold under the provisions of federal securities laws are generally entitled to registration by notification. Registration by notification occurs when the security has been registered with the Securities and Exchange Commission and the department is notified that the security will be sold in Florida.

Section 517.012, F.S., generally requires all dealers, issuers, and associated persons to register before selling or offering for sale from any location in this state or to any person located in this state. Likewise, investment advisors must register prior to engaging in business in Florida or rendering advice to persons located in this state.

Section 517.12, F.S., sets forth the requirements for the registration of associated persons, dealers, investment advisors, and branch offices in Florida, prior to offering to sell securities in Florida. A dealer is typically a person who engages as a broker or principal in the business of dealing or trading securities issued by another person. An investment advisor is typically a person who engages in the business of advising others as to the advisability of investments in securities. Currently, the definition of an investment adviser, as set forth in s. 517.021, F.S., exempts a

licensed attorney or a certified public accountant whose performance of such services is solely incidental to the practice of the respective profession

Section 517 131, F.S., establishes the Securities Guaranty Fund (Fund), provides for its funding, and provides for the disbursement of funds to individuals. The Fund was established to pay individuals who have received a judgment for monetary damages caused by the acts of a dealer, investment adviser, or associated person. The individual must have unsuccessfully attempted to collect the amount of judgment, that is, the individual who makes a claim against the Fund must still be owed money in connection with the judgment.

Pursuant to s. 517 141, F.S., generally the maximum an individual claimant may receive from the Fund is capped at \$10,000 and the aggregate amount all claimants may receive from the Fund is \$100,000 (if the amount claimed is greater than \$100,000, the amount per claimant will be prorated) For example, a claimant may obtain a judgment against an associated person for \$100,000, and only be able to collect \$50,000 from the associated person. This leaves a \$50,000 difference that the claimant may file for reimbursement from the Fund However, the claimant would only be eligible to receive up to \$10,000, assuming the claimant qualified under the statutory provisions and the number of other claimants did not exceed nine

In 1996, s. 517.131(1), F.S. was amended to revise the amount of assessment fees which are deposited into the Fund to 20 percent for all dealers and investment advisers, and 10 percent of all assessment fees collected from associated persons. The maximum balance in the Fund at which the collection of the assessment fee would cease being deposited into the Fund was increased from \$250,000 to \$1,500,000

Section 517 161, F.S., authorizes the department to deny or revoke any registration granted for a dealer, investment adviser, associated person, or branch office if the department determines that the applicant or registrant has been the subject of a violation of any federal or state securities or commodities law or any rule or regulation ordered by a state or federal agency regulating banking, insurance, finance, real estate, mortgage brokers, or other related or similar industries.

Section 517 302, F.S., provides that any amounts assessed as costs of investigation and prosecution under this subsection are required to be deposited in the Anti-Fraud Trust Fund. Such funds, when authorized by appropriation, may be used for investigation and prosecution of civil and criminal actions arising under the provisions of ch. 517, F.S.

Section 517.311, F.S., prohibits any person registered or required to be registered by the department to misrepresent that such person has been approved by the state or any agency or officer of the state or the United States or agency or officer of the United States.

### **Federal Law**

Federal law requires all securities to be registered with the Securities and Exchange Commission (SEC) unless the securities are specifically exempted under 15 USC s. 77c or the transactions are

exempt under 15 USC s. 77d. Those securities required to be registered will undergo a review by the SEC to determine if the disclosures adequately protect the interests of the public

In 1996, the U S Congress enacted the National Securities Markets Improvement Act. The purpose of the legislation is to modernize certain important aspects of the regulatory scheme governing capital markets, including the respective responsibilities of the federal and state authorities over the securities markets, and to eliminate the costs and burdens of duplicative and unnecessary regulation while maintaining important investor protections.

This Act preempts the states' authority to require the registration of covered securities advisers. Covered securities are defined by federal law to include those securities listed or authorized for listing on certain national securities exchanges, securities issued by a registered investment company, securities offered to qualified purchasers (as defined by the SEC). The federal law allows the states to retain the authority to investigate and bring enforcement actions with respect to fraud or deceit in connection with securities or securities transactions. The states also retain the authority to collect filing and registration fees in effect on October 11, 1996.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 517.021, F.S., to clarify the definition of an associated person, with respect to a dealer or an investment adviser, as well as federal covered adviser. An associated person, with respect to a federal covered adviser, is any person who is an investment adviser representative and who has a place of business in Florida, as such terms are defined in Rule 203A-3 of the SEC adopted under the Investment Adviser Act of 1940.

The section also defines the term, a "federal covered adviser" to mean a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940 or who is excluded from the definition of an investment advisor under s. 202(a)(11) of the Investment Advisers Act of 1940, as of July 9, 1997. The term, "federal covered adviser," does not include any person who is excluded from the definition of an investment adviser under subparagraphs (12)(b)1.- 8.

The section is also amended to specify that the term, an investment adviser, does not include a federal covered adviser.

**Section 2.** Amends s. 517.051, F.S., to exclude from registration requirements any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940 and provides that Section 6(c) of the federal Philanthropy Protection Act of 1995 would not preempt any provision of this chapter. As a result, Florida preserves its right to require charitable organizations to register with the department to sell their securities in Florida.

**Section 3.** Amends s. 517.061, F.S., to exempt certain securities transactions by a registered dealer from the registration provisions of s. 517.07, F.S., the offer or sale of securities, other than



any security that is a federal covered security pursuant to s 18(b)(1) of the federal Securities Act of 1933 and is not subject to any registration or filing requirements under this act. The department is authorized to deny the exemption with reference to any particular security, other than a federal covered security. A nonissuer transaction by a registered associated person of a registered dealer and any resale transaction by a sponsor of an unit investment trust is exempt from this section if, at the time of the transaction, certain conditions are met.

**Section 4.** Amends s. 517.081, F.S., to authorize the department to establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the department with the data required by this section for securities registration and eliminates an obsolete reference

**Section 5.** Amends s 517.082, F.S., to authorize the department to establish by rule procedures for depositing fees and filing of documents electronically for securities registration by notification and to eliminate an obsolete reference

**Section 6.** Amends s 517 12, F.S., to prohibit the registration of any person as an associated person of an investment adviser unless the investment adviser with which the applicant seeks registration is in compliance with the notice filing requirements specified in s. 517 1201, F.S., or is lawfully registered with the department pursuant to ch. 517, F S.

The department is authorized to establish by rule, procedures for depositing fees and filing documents by electronic means for dealers, associated persons, investment advisers, and branch offices, provided such procedures provide the department with the information and data required within this section.

The department is authorized to require, in general, that all dealers comply with net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. Securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, are exempted from this provision. The department is authorized to require, by rule, a dealer to file with the department any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act

The department is authorized to require securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities to maintain a minimum net capital. An investment adviser that maintains its principal place of business in another state is exempt from this requirement, provided such investment adviser is registered in the state where it maintains its principal place of business and is in compliance with such state`s net capital requirements

Every federal covered adviser is required to promptly file with the department notice of the termination of any associated person registered for such dealer or investment adviser in Florida.

**Section 7.** Creates s. 517.1201, F.S., to establish notice filing requirements for federal covered advisers. An individual engaging in business in Florida as a federal covered adviser is required to file with the department a copy of the documents that have been filed or that are required to be filed with the Securities and Exchange Commission, with a consent to service of process and a filing fee of \$200. A notice of filing is effective upon receipt. Subsequent renewal fees are \$200. If the federal covered adviser has not renewed a notice filing prior to its expiration, the department is authorized to impose a \$200 late payment fee. The department is authorized to require, by rule, that the federal covered adviser file any amendments filed or required to be filed by the Securities and Exchange Commission.

**Section 8.** Amends s. 517.1205, F.S., to specify that the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved by the department.

**Section 9.** Amends s. 517.131, F.S., to require that a portion of the federal covered advisers fees be allocated to the Securities Guaranty Fund.

**Section 10.** Amends s. 517.161, F.S., to provide additional grounds for the department to deny registration under s. 517.12 or to revoke, restrict, or suspend any registration granted by the department. These grounds include: violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

**Section 11.** Amends s. 517.302, F.S., to authorize the department to use funds deposited in the Anti-Fraud Trust Fund for the investigation and prosecution of administrative actions arising under the provisions of chapter 517, F.S. The department is also authorized to use such funds to improve the public's awareness and understanding of prudent investing.

**Section 12.** Amends s. 517.311, F.S., to prohibit any person subject to the notice requirements under any section of ch. 517, F.S., to misrepresent that such person has been recommended or approved by the state or any agency or officer of the state or by the United States or any agency or officer of the United States.

**Section 13.** Appropriates \$75,000 from the Anti-Fraud Trust Fund to the department, for fiscal year 1998-99, to be used to improve the public's awareness and understanding of prudent investing.

**Section 14.** Provides that the Act will take effect upon becoming a law.

**IV. Constitutional Issues:**

A Municipality/County Mandates Restrictions

None.

B. Public Records/Open Meetings Issues.

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

As a result of the implementation of the federal act, which is codified in state law by this bill, fees for branch offices and representatives of federal covered advisers that do not have a physical location in Florida are eliminated. The department has provided the following estimated impact:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-2000</u>
Federal covered advisers branch offices \$100 per office	(\$7,000) 70 offices	(\$7,700) 77 offices	(\$8,470) 85 offices
Federal covered advisers agents \$40 per agent	(\$144,000) 3600 agents	(\$158,400) 3960 agents	(\$174,240) 4356 agents

B Private Sector Impact:

Due to the enactment of the federal law and the subsequent conforming changes in the Florida law provided by this bill, federal covered advisers will not be required to register and pay fees for branch offices and agents with the department, if they do not maintain a physical location in Florida. However, federal covered advisers will be required to file a notice and a \$200 fee, which replaces the current \$200 registration fee.

**C Government Sector Impact**

The bill appropriates \$75,000 from the Anti-Fraud Trust Fund to the department for the purpose of improving the public's awareness and understanding of prudent investing and for the costs of investigating and prosecuting administrative actions arising under the provisions of ch. 517, F.S.

**VI. Technical Deficiencies:****Section 1:**

Section 517.021(8), F.S., continues to include a reference to those persons that are excluded from the definition of Section 202(a)(11) of the Investment Advisers Act of 1940. By continuing to include this language, the department will subject persons to a notice filing requirement under s. 517.1201, F.S., notwithstanding the fact that they presently make no federal filing.

**Section 6:**

Section 517.12, F.S., prohibits the department from registering any associated person of an investment adviser, unless the investment adviser with which the associated person seeks registration is in compliance with the notice filing requirements of s. 517.1201, F.S. However, no investment adviser is required to comply with the provisions of s. 517.1201, F.S. Instead, federal covered advisers must comply with the notice filing provisions of s. 517.1201, F.S.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None

**LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT**

Sess. Law # <i>98-221</i>	Sec. #	LOF cite
Prime Bill # <i>HB 3239</i>	Comp./Sim. Bills <i>SB 510</i>	
JLHC Hist. Cites	Senate <i>78</i> House <i>336</i>	Comms. of Ref. Senate <i>Banks Dev. W.M.</i> House <i>Fin Serv.</i>

**COMMITTEE RECORDS**

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	v
H	Finan Serv.	1998	<i>in dup file</i>	<i>19/2866-7</i>	
"	"	"	<i>Original SAs/final</i>	<i>19/2867</i>	
"	"	"	<i>Final file HB 3239</i>	<i>19/2869</i>	
S	BI	1998	<i>Meeting files</i>	<i>18/2285</i>	
"	"	"	<i>Bill file SB 510</i>	<i>18/2386</i>	
<input type="checkbox"/> continued on reverse					

**Senate/House Journals**

Page #	?	Date	Page #	?	Date
<i>HJ. 328</i>		<i>Mar: 24, 1998</i>			
<i>ST. 514-515</i>		<i>April 17, 1998</i>			

**Committee/Floor Tapes**

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

**Other Documentation**

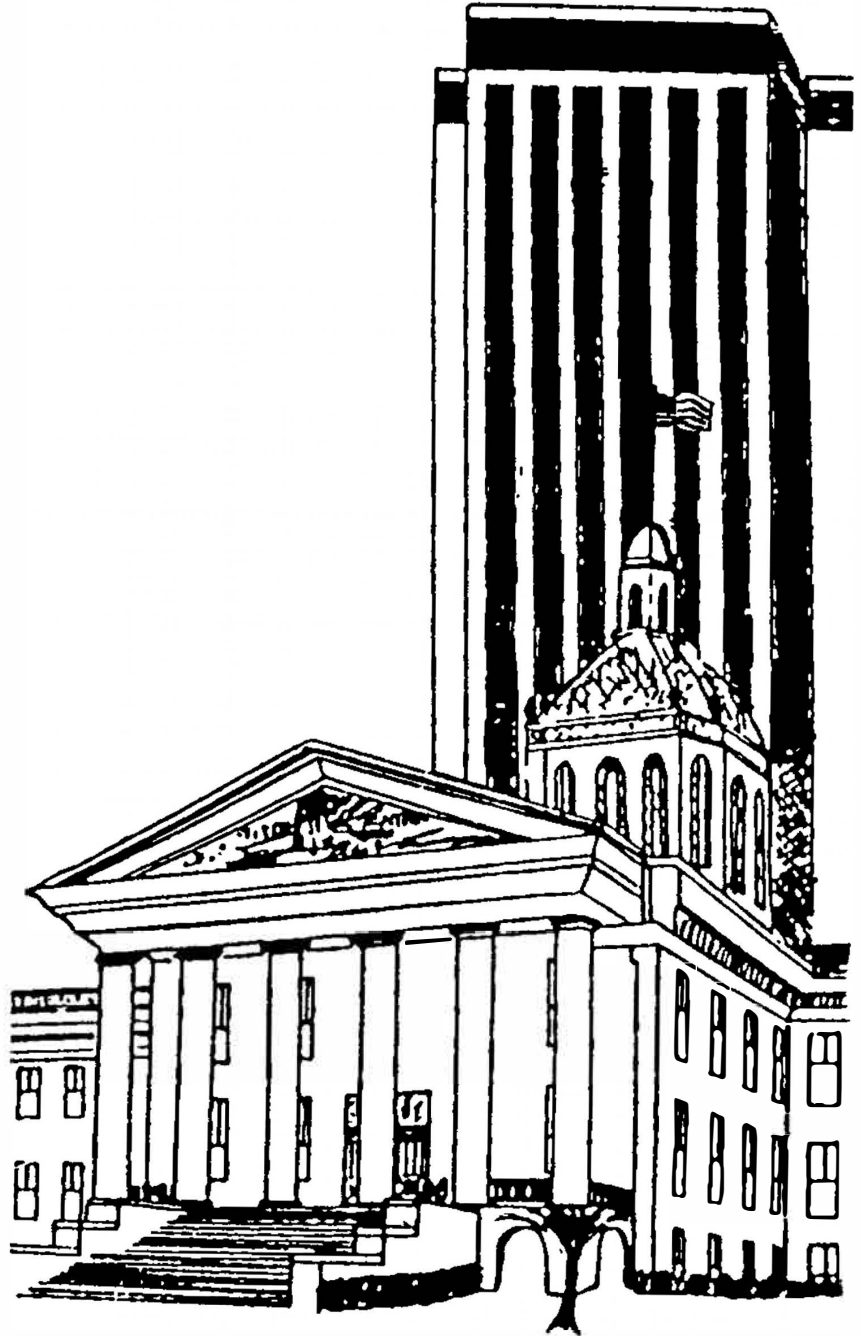
Record Series Title, folder title, etc.	Location Cite



# **FLORIDA LEGISLATURE**

## **FINAL LEGISLATIVE BILL INFORMATION “CITATOR”**

*1998 Regular Session  
1997 Special Session A*



prepared by:

**LEGISLATIVE INFORMATION SERVICES DIVISION  
OFFICE OF LEGISLATIVE SERVICES  
Claude Pepper Building, Room 704  
111 West Madison Street  
Tallahassee, Florida 32399-1400  
Telephone (850) 488-4371**

## HISTORY OF SENATE BILLS

## S 504 (CONTINUED)

- 04/22/98 SENATE On Committee agenda—Ways and Means, 04/23/98, 1 00 pm, Room—EL  
 04/23/98 SENATE Comm Action—Favorable by Ways and Means—SJ 00927  
 04/24/98 SENATE Placed on Calendar—SJ 00927  
 05/01/98 SENATE Died on Calendar, Iden/Sim/Compare Bill(s) passed, refer to CS/HB 3713 (Ch 98—335)

## S 506 GENERAL BILL/CS by Children, Families and Seniors; Rossini (Similar CS/H 1433, Compare 1ST ENG/H 4636, CS/CS/2ND ENGS 0484)

- Public Records/CFS Department, deletes provisions re release of records of CFS Department which pertain to investigation of death of disabled adult or elderly person as result of abuse, neglect, or exploitation or death of child as result of abuse, neglect, or abandonment, provides for sharing of confidential or exempt information between Health Dept & CFS Dept, etc Amends 119 07, 415 51, 107, creates 381 0022, 402 115, repeals 415 51(1)(b), 107(1)(b) Effective Date Upon becoming law  
 12/10/97 SENATE Prefiled  
 01/09/98 SENATE Referred to Children, Families and Seniors, Governmental Reform and Oversight  
 01/26/98 SENATE On Committee agenda—Children, Families and Seniors, 02/03/98, 2 30 pm, Room—A(LL—37)  
 02/03/98 SENATE Comm Action CS by Children, Families and Seniors  
 02/05/98 SENATE Now in Governmental Reform and Oversight  
 03/03/98 SENATE Introduced, referred to Children, Families and Seniors, Governmental Reform and Oversight—SJ 00037, On Committee agenda—Children, Families and Seniors, 02/03/98, 2 30 pm, Room—A(LL—37), Comm Action. CS by Children, Families and Seniors—SJ 00008, CS read first time on 03/03/98—SJ 00101, Now in Governmental Reform and Oversight—SJ 00008  
 03/26/98 SENATE On Committee agenda—Governmental Reform and Oversight, 03/31/98, 9 00 am, Room—309C—Not considered  
 04/02/98 SENATE On Committee agenda—Governmental Reform and Oversight, 04/07/98, 2 00 pm, Room—309C  
 04/07/98 SENATE Comm Action—Favorable with 2 amendment(s) by Governmental Reform and Oversight—SJ 00407  
 04/08/98 SENATE Placed on Calendar—SJ 00407  
 04/22/98 SENATE Placed on Special Order Calendar—SJ 00813  
 04/23/98 SENATE Placed on Special Order Calendar—SJ 00813, Read second time—SJ 00848, Amendment(s) adopted—SJ 00848, House Bill substituted—SJ 00848, Laid on Table, Iden/Sim/Compare Bill(s) passed, refer to CS/HB 1433 (Ch 98—255), See also CS/CS/SB 484 (Ch 98—191)

## S 508 GENERAL BILL/CS by Criminal Justice; Horne (Similar CS/CS/H 1137)

- Alcohol Impairment Notification, authorizes certain health care providers who become aware of person's unlawful blood-alcohol level to notify law enforcement officials, prescribes form for notice, provides that such notice or failure to provide notice is not violation of any ethical, moral, or legal duty, provides for certain immunity from civil or criminal liability & from any professional disciplinary action, etc Amends 316 1932, 1933 Effective Date 07/01/1998  
 12/12/97 SENATE Prefiled  
 01/09/98 SENATE Referred to Criminal Justice  
 03/03/98 SENATE Introduced, referred to Criminal Justice—SJ 00037  
 03/12/98 SENATE On Committee agenda—Criminal Justice, 03/17/98, 9 00 am, Room—A(LL—37)  
 03/17/98 SENATE Comm Action—CS by Criminal Justice—SJ 00182, CS read first time on 03/18/98—SJ 00208  
 03/18/98 SENATE Placed on Calendar—SJ 00182  
 04/01/98 SENATE Placed on Special Order Calendar—SJ 00343  
 04/02/98 SENATE Placed on Special Order Calendar—SJ 00343  
 04/08/98 SENATE Placed on Special Order Calendar—SJ 00406  
 04/09/98 SENATE Placed on Special Order Calendar—SJ 00406  
 04/13/98 SENATE Placed on Special Order Calendar—SJ 00424; House Bill substituted—SJ 00452, Laid on Table, Iden/Sim/Compare Bill(s) passed, refer to CS/CS/HB 1137 (Ch 98—27)

## S 510 GENERAL BILL by Horne; (CO-SPONSORS) Bronson (Similar 2ND ENG/H 3239)

- Securities Transactions, specifies additional securities as exempt from certain registration requirements, clarifies exemption of certain securities in certain transactions from registration requirements, authorizes Banking & Finance Dept to adopt certain rules for electronic deposits & filings, requires certain dealers to comply with net capital & ratio requirements, specifies notice filing requirements for federal covered advisers, etc Amends Ch 517 Appropriation \$75,000 Effective Date Upon becoming law  
 12/12/97 SENATE Prefiled

## S 510 (CONTINUED)

- 01/09/98 SENATE Referred to Banking and Insurance, Ways and Means  
 01/26/98 SENATE On Committee agenda—Banking and Insurance, 02/03/98, 9 00 am, Room—EL  
 02/03/98 SENATE Comm Action Favorable with 2 amendment(s) by Banking and Insurance  
 02/04/98 SENATE Now in Ways and Means  
 03/03/98 SENATE Introduced, referred to Banking and Insurance, Ways and Means—SJ 00037, On Committee agenda—Banking and Insurance, 02/03/98, 9 00 am, Room—EL, Comm Action Favorable with 2 amendment(s) by Banking and Insurance—SJ 00007, Now in Ways and Means—SJ 00007  
 03/23/98 SENATE On Committee agenda—Ways and Means, 03/26/98, 2 30 pm, Room—EL—Not considered  
 03/27/98 SENATE On Committee agenda—Ways and Means, 04/01/98, 12 30 pm, Room—EL—Not considered  
 04/01/98 SENATE On Committee agenda—Ways and Means, 04/06/98, 2 00 pm, Room—EL  
 04/06/98 SENATE Comm Action—Favorable by Ways and Means—SJ 00407  
 04/07/98 SENATE Placed on Calendar—SJ 00407  
 04/15/98 SENATE Placed on Special Order Calendar—SJ 00478  
 04/16/98 SENATE Placed on Special Order Calendar—SJ 00478  
 04/17/98 SENATE Placed on Special Order Calendar—SJ 00498, Read second time—SJ 00514, Amendment(s) adopted—SJ 00515, House Bill substituted—SJ 00515, Laid on Table, Iden/Sim/Compare Bill(s) passed, refer to HB 3239 (Ch 98—221)

## S 512 GENERAL BILL by Cowin; (CO-SPONSORS) Burt; Brown-Waite; Williams; Grant; Ostalkiewicz (Identical H 3299)

- Excess Utility Payments Refund, requires Comptroller to provide refund to certain utility customers who paid more under uniform rate structure than those customers would have paid under modified stand-alone rate structure, requires Public Service Commission to notify utility customers who are eligible for refund, provides requirements for applying for refund, requires Comptroller to verify eligibility for refund, etc Appropriation Effective Date Upon becoming law  
 12/16/97 SENATE Prefiled  
 01/09/98 SENATE Referred to Regulated Industries, Ways and Means  
 03/03/98 SENATE Introduced, referred to Regulated Industries, Ways and Means—SJ 00038  
 05/01/98 SENATE Died in Committee on Regulated Industries

## S 514 GENERAL BILL/CS by Criminal Justice; Grant; (CO-SPONSORS) Brown-Waite; Cowin; Casas; Williams (Similar CS/1ST ENG/H 3107, Compare H 4827, CS/S 1992)

- Sexual Predator Registration, revises period of time after which sexual predator may petition court for removal of such designation, requires that court make certain determinations following petition to remove offender's designation as sexual predator, requires that state attorney be given notice of such petition, authorizes state attorney to present evidence at hearing on petition, authorizes court to allow sexual predator to petition court at future date Amends 775 21 Effective Date 07/01/1998  
 12/18/97 SENATE Prefiled  
 01/09/98 SENATE Referred to Criminal Justice  
 02/09/98 SENATE On Committee agenda—Criminal Justice, 02/17/98, 9 00 am, Room—A(LL—37)  
 02/17/98 SENATE Comm Action—CS by Criminal Justice  
 02/20/98 SENATE Placed on Calendar  
 03/03/98 SENATE Introduced, referred to Criminal Justice—SJ 00038, On Committee agenda—Criminal Justice, 02/17/98, 9 00 am, Room—A(LL—37), Comm Action—CS by Criminal Justice—SJ 00009, CS read first time on 03/03/98—SJ 00101, Placed on Calendar—SJ 00009  
 04/22/98 SENATE Placed on Special Order Calendar—SJ 00813  
 04/23/98 SENATE Placed on Special Order Calendar—SJ 00813  
 04/24/98 SENATE Placed on Special Order Calendar—SJ 00868, House Bill substituted—SJ 00926, Laid on Table, Refer to CS/HB 3107 (Vetoed by Governor), Refer to CS/SB 1992 (Ch 98—81)

## S 516 GENERAL BILL/CS by Judiciary; Hargrett (Similar H 4145, Compare CS/CS/CS/S 0092, CS/CS/1ST ENG/S 2024)

- Murphy Act Lands, provides for conveyance of all Murphy Act transportation easements to govt entity currently having title to adjacent roadway, requires establishment of procedure for review of deeds containing Murphy Act transportation reservations, sets requirements for review process, provides for compensation of certain property owners if reservation denies property owner current economic use of property, etc Amends 253 82, 712 04, 05 Effective Date Upon becoming law  
 12/18/97 SENATE Prefiled



FLORIDA LEGISLATURE—REGULAR SESSION—1998  
HISTORY OF HOUSE BILLS

**H 3229 (CONTINUED)**

04/24/98 HOUSE Placed on Consent Calendar, Read second time -HJ 01293, Amendment(s) adopted -HJ 01293

04/28/98 HOUSE Read third time -HJ 01456, CS passed as amended, YEAS 118 NAYS 0 -HJ 01456

04/28/98 SENATE In Messages

04/29/98 SENATE Received, referred to Ways and Means -SJ 01224, Immediately withdrawn from Ways and Means -SJ 01135, Substituted for CS/SB 434 -SJ 01135, Read second time -SJ 01135, Amendment(s) adopted -SJ 01135, Read third time -SJ 01135, CS passed as amended, YEAS 39 NAYS 0 -SJ 01135

04/29/98 HOUSE In returning messages, Concurred -HJ 01709, CS passed as amended, YEAS 117 NAYS 0 -HJ 01709, Ordered engrossed, then enrolled -HJ 01709

05/14/98 Signed by Officers and presented to Governor

05/30/98 Became Law without Governor's Signature, Chapter No 98-317

**H 3231 GENERAL BILL by Burroughs; (CO-SPONSORS) Horan; Melvin (Identical S 0170)**

Rural Hospitals, revises definition re rural hospitals, requires study Amends 395 602, 408 07 Effective Date 04/22/1998

11/21/97 HOUSE Prefiled

01/16/98 HOUSE Referred to Health Care Standards & Regulatory Reform (GSC)

02/26/98 HOUSE On Committee agenda—Health Care Standards & Regulatory Reform (GSC), 03/03/98, 3 00 pm, 102-HOB

03/03/98 HOUSE Introduced, referred to Health Care Standards & Regulatory Reform (GSC) -HJ 00020, On Committee agenda—Health Care Standards & Regulatory Reform (GSC), 03/03/98, 3 00 pm, 102-HOB, Comm Action -Unanimously Favorable by Health Care Standards & Regulatory Reform (GSC) -HJ 00148

03/05/98 HOUSE Pending Consent Calendar -HJ 00148

03/10/98 HOUSE Available for Consent Calendar

03/17/98 HOUSE Placed on Consent Calendar, Read second and third times -HJ 00210, Passed, YEAS 116 NAYS 0 -HJ 00210

03/18/98 SENATE In Messages

03/19/98 SENATE Received, referred to Health Care, Ways and Means -SJ 00234

04/02/98 SENATE Withdrawn from Health Care, Ways and Means -SJ 00369, Substituted for SB 170 -SJ 00369, Read second time -SJ 00369

04/08/98 SENATE Read third time -SJ 00390, Passed, YEAS 36 NAYS 0 -SJ 00390, Immediately certified -SJ 00390

04/08/98 HOUSE Ordered enrolled -HJ 00493

04/14/98 Signed by Officers and presented to Governor -HJ 00596

04/22/98 Became Law without Governor's Signature, Chapter No 98-21 -HJ 00964

**H 3233 GENERAL BILL/CS by Agriculture (GRC); Jacobs; (CO-SPONSORS) D. Prewitt; Silver (Similar S 1860)**

Repackaged Raw Meat, Fish, Poultry, prohibits sale, delivery for sale, or offering for sale of repackaged or rewrapped fresh meat, fish, or poultry that does not display specified labeling, reenacts provision re penalty for violation of certain provision to incorporate amendment, in reference thereto Amends 500 04, reenacts 500 177(1) Effective Date Contingent

11/21/97 HOUSE Prefiled

03/02/98 HOUSE Referred to Agriculture (GRC), Crime & Punishment (JC), Business Development & International Trade (EIC)

03/03/98 HOUSE Introduced, referred to Agriculture (GRC), Crime & Punishment (JC), Business Development & International Trade (EIC) -HJ 00020

03/06/98 HOUSE On Committee agenda—Agriculture (GRC), 03/12/98, 1 30 pm, 317C

03/12/98 HOUSE Comm Action Unanimously CS by Agriculture (GRC) -HJ 00306

03/20/98 HOUSE CS read first time on 03/20/98 -HJ 00302

03/19/98 HOUSE Now in Crime & Punishment (JC) -HJ 00306

03/24/98 HOUSE Withdrawn from Crime & Punishment (JC) -HJ 00314, Now in Business Development & International Trade (EIC)

05/01/98 HOUSE Died in Committee on Business Development & International Trade (EIC)

**H 3235 GENERAL BILL by Morroni; (CO-SPONSORS) Heyman; Fasano; D. Prewitt**

Persons With Disabilities, requires placement of specified signs at self-service gasoline stations for purpose of identifying gasoline pumps used to provide services to persons with disabilities, provides requirements for design & location of such signs, provides penalty Amends 526 141 Effective Date Upon becoming law

11/21/97 HOUSE Prefiled

01/16/98 HOUSE Referred to Transportation (EIC), Governmental Rules & Regulations (GRC)

**H 3235 (CONTINUED)**

01/27/98 HOUSE Withdrawn from Transportation (EIC), Governmental Rules & Regulations (GRC), Filed and not referred

03/03/98 HOUSE Introduced -HJ 00020

03/12/98 HOUSE Withdrawn from further consideration -HJ 00169

**H 3237 GENERAL BILL by Stabins, Fasano (Compare S 0674)**

Bingo, revises definitions, provides requirements re conduct of bingo by members of charitable, nonprofit, or veterans' organizations, revises requirements re prizes, days & times when bingo may be conducted, & players' responsibilities, prohibits video or computerized bingo cards, specifies that counties & municipalities may impose stricter regulations & adopt certain zoning ordinances, etc Amends 849 0931 Effective Date Upon becoming law

11/21/97 HOUSE Prefiled

01/16/98 HOUSE Referred to Regulated Services (EIC)

03/03/98 HOUSE Introduced, referred to Regulated Services (EIC) -HJ 00020

03/12/98 HOUSE Withdrawn from Regulated Services (EIC), Filed and not referred -HJ 00168

04/09/98 HOUSE Withdrawn from further consideration -HJ 00504

**H 3239 GENERAL BILL/2ND ENG by Thrasher; Lippman; (CO-SPONSORS) Bainter; Saffley; Mackey; Feeney (Similar S 0510)**

Securities Transactions, specifies additional securities as exempt from certain registration requirements, clarifies exemption of certain securities in certain transactions from registration requirements, authorizes Banking & Finance Dept to adopt certain rules for electronic deposits & filings, requires certain dealers to comply with net capital & ratio requirements, specifies notice filing requirements for federal covered advisers, etc Amends Ch 517 Appropriation \$75,000 Effective Date 05/24/1998

12/02/97 HOUSE Prefiled

01/06/98 HOUSE Referred to Financial Services (EIC), On Committee agenda—Financial Services (EIC), 01/06/98, 9 00 am, Morris Hall, Comm Action -Unanimously Favorable with 1 amendment(s) by Financial Services (EIC)

01/09/98 HOUSE Pending Consent Calendar

03/03/98 HOUSE Introduced, referred to Financial Services (EIC) -HJ 00020, On Committee agenda—Financial Services (EIC), 01/06/98, 9 00 am, Morris Hall, Comm Action -Unanimously Favorable with 1 amendment(s) by Financial Services (EIC) -HJ 00079, Pending Consent Calendar -HJ 00079

03/06/98 HOUSE Available for Consent Calendar

03/17/98 HOUSE Placed on Consent Calendar

03/24/98 HOUSE Read second time -HJ 00328, Amendment(s) adopted -HJ 00328, Read third time -HJ 00328, Passed as amended, YEAS 119 NAYS 0 -HJ 00328

03/25/98 SENATE In Messages

04/01/98 SENATE Received, referred to Banking and Insurance, Ways and Means -SJ 00354

04/17/98 SENATE Withdrawn from Banking and Insurance, Ways and Means -SJ 00515, Substituted for SB 510 -SJ 00515, Read second time -SJ 00515, Amendment(s) adopted -SJ 00515

04/22/98 SENATE Read third time -SJ 00762, Passed as amended, YEAS 32 NAYS 0 -SJ 00762, Immediately certified -SJ 00762

04/22/98 HOUSE In returning messages

04/29/98 HOUSE Concurred -HJ 01565, Passed as amended, YEAS 118 NAYS 0 -HJ 01565, Ordered engrossed, then enrolled -HJ 01565

05/08/98 Signed by Officers and presented to Governor

05/24/98 Became Law without Governor's Signature, Chapter No 98-221

**H 3241 GENERAL BILL/CS by Law Enforcement & Public Safety (JC); Meek; Miller; (CO-SPONSORS) Heyman (Similar S 0262, Compare S 0420)**

Securing of Firearms, redefines term "securely encased" to include description of firearm that is secured with activated locking device, defines term "locking device", provides that it is third degree felony to knowingly alter or remove locking device from firearm without owner's authorization, or to sell, deliver or possess firearm if locking device has been altered or removed without owner's authorization, provides penalties, etc Amends 790 001, 174, 784 05 Effective Date Contingent

12/02/97 HOUSE Prefiled

01/16/98 HOUSE Referred to Law Enforcement & Public Safety (JC), Crime & Punishment (JC), Governmental Rules & Regulations (GRC), Criminal Justice Appropriations

03/03/98 HOUSE Introduced, referred to Law Enforcement & Public Safety (JC), Crime & Punishment (JC) Governmental Rules & Regulations (GRC), Criminal Justice Appropriations -HJ 00021

03/25/98 HOUSE On Committee agenda—Law Enforcement & Public Safety (JC), 04/01/98, 1 45 pm, 314-HOB—Temporarily deferred

SENATE VOTE RECORD ON BILL NO. SB 510

COMMITTEE ON: Banking and Insurance

ACTION: Favorably with 2 amendment(s)

DATE: February 3, 1998

OTHER COMMITTEE REFERENCES:

TIME: 9:00 AM -- 11:30 AM

Ways and Means

PLACE: EL

02/03/98 02/03/98

FINAL BILL VOTE		SENATORS	Amend. #1 DiazBalart p. 3, lns. 17-20 technical		Amend. #2 DiazBalart p. 13, lns. 22-29							
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Bankhead										
		Childers										
X		Grant										
X		Harris										
X		Rossin										
		Scott										
		Sullivan										
X		Thomas										
X		Williams										
X		VICE CHAIRMAN Holzendorf										
X		CHAIRMAN Diaz-Balart										
8	0	TOTAL	FWO	-	FWO	-						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

COMMITTEE APPEARANCE RECORD  
(Submit to Committee Chairman or Secretary)

3 Feb 1998  
(date)

510  
(Bill No.)

Name TAMI CAIN REED

Address 1401 H St NW

Representing Investment Company Institute

Lobbyist (Registered with Senate) Yes \_\_\_\_\_ No

Speaking: For  Against \_\_\_\_\_ Information

Subject Securities transactions

If state employee-- Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

(State employees are required to file the first copy of this form with Committee Chairman unless appearance is requested by chairman as a witness or for informational purposes.)

COMMITTEE APPEARANCE RECORD  
(Submit to Committee Chairman or Secretary)

7/3/98  
(date)

510  
(Bill No.)

Name Vicki Waters

Address 315 South Main St #101

Representing Secretary of Education

Lobbyist (Registered with Senate) Yes  No

Speaking: For  Against  Information

Subject Education

If state employee-- Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

*no need to speak*

(State employees are required to file the first copy of this form with Committee Chairman unless appearance is requested by chairman as a witness or for informational purposes.)

COMMITTEE APPEARANCE RECORD  
(Submit to Committee Chairman or Secretary)

2-3-75  
(date)

313 510  
~~513 510~~  
(Bill No.)

Name Laura J. Shuman

Address PL 09, 1st (Capital)

Representing Dept of Banking & Finance

Lobbyist (Registered with Senate) Yes  No

Speaking: For  Against  Information

Subject Amendment to Rules (APA)

If state employee-- Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

(State employees are required to file the first copy of this form with Committee Chairman unless appearance is requested by chairman as a witness or for informational purposes.)





Amendment No. 1 (for drafter's use only)

Senate CHAMBER ACTION House

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ADOPTED MAR 24 1998

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The Committee on Financial Services offered the following:

**Amendment**

On page 8, line 31,  
remove from the bill: or  
and insert in lieu thereof: and

SENATE VOTE RECORD ON BILL NO. SB 510

COMMITTEE ON: Banking and Insurance

ACTION: Favorably with 2 amendment(s)

DATE: February 3, 1998

TIME: 9:00 AM -- 11:30 AM

OTHER COMMITTEE REFERENCES:

Ways and Means

PLACE: EL

FINAL BILL VOTE		SENATORS	02/03/98 Amend. #1		02/03/98 Amend. #2							
			Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Bankhead										
		Childers										
X		Grant										
X		Harris										
X		Rossin										
		Scott										
		Sullivan										
X		Thomas										
X		Williams										
X		VICE CHAIRMAN										
X		Holzendorf										
X		CHAIRMAN										
X		Diaz-Balart										
8	0	TOTAL	FWO	-	FWO	-						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay



STORAGE NAME h3239 fs  
DATE January 5, 1998

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
Financial Services  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 3239  
RELATING TO: Securities  
SPONSOR(S): Representatives Thrasher, Lippman and others  
COMPANION BILL(S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Financial Services
  - (2)
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

In general, HB 3239 conforms state law to the National Securities Markets Improvement Act enacted by Congress in 1996, as follows.

- A "federal covered investment adviser" would no longer be required to register with the Department of Banking and Finance (the department). A "federal covered investment adviser" handles more than \$25 million in assets
- The department would retain authority to investigate fraud or deceit and bring enforcement actions, but would no longer regulate "federal covered investment advisers "
- Any "federal covered investment adviser" would not be required to register their branch offices or their agents who do not have a physical presence in the state

As a result of HB 3239, a "federal covered investment adviser" would be required to file notice with the department and pay a filing fee. The department would be authorized to establish procedures by rule for depositing fees and filing documents electronically. Charitable organizations that offer securities for sale would continue to be required to register with the department.

As part of this bill of HB 3239, \$75,000 would be appropriated from the Anti-Fraud Trust Fund to be used to improve the public's awareness of prudent investing.

## II SUBSTANTIVE RESEARCH

### A. PRESENT SITUATION:

#### The National Securities Markets Improvement Act

In 1996, the U.S. Congress passed the National Securities Markets Improvement Act (NSMIA) The NSMIA effected a number of revisions to federal securities law which impacted the regulation of securities and investment advisers by the Florida Department of Banking and Finance (the department) These include the following changes:

- preempting state regulation of "federal covered investment advisers" managing more than \$25 million in assets,
- permitting states to require "federal covered investment advisers" to file notice with state regulatory authorities;
- preempting state regulation of investment advisers that do business in the state, but do not have a place of business or branch office in the state; and
- preempting the authority of the state to require the registration of a transaction involving "federal covered securities" by a registered dealer.

Congress did not alter existing state authority to investigate fraud or deceit and bring enforcement actions against both federal covered and non-covered investment advisers.

The department implemented many other necessary changes through rulemaking and achieved compliance with others through legislation enacted during the 1997 legislative session.

Prior to the passage of the NSMIA, Florida Statutes required a "federal covered investment adviser" to register with the department Included in registration documents were the name and address of the applicant, articles of incorporation (if applicable), names of associated persons to be employed, the names of any officers or partners, and any character references. The department required a registration fee of \$200. According to the department, there are 1,905 investment advisers registered in Florida Of that 1,905, the department estimates that approximately 743, or 39 percent, are "federal covered investment advisers."

After the enactment of the NSMIA, the state can no longer require "federal covered investment advisers" to register with the department However, states do have the discretion to require "federal covered investment advisers" to file notice with state regulators (i.e , the department) before the "federal covered investment adviser" is eligible to conduct business in the state.

Before the passage of the NSMIA, the department required the registration of associated persons of "federal covered investment advisers" even if these associated persons did not have a place of business in the state Documentation required for registration included the name and address of the applicant, articles of incorporation (if applicable), the names of any officers or partners, and any character references. The department required a registration fee of \$40. After the passage of the NSMIA, the state can no

longer require associated persons of "federal covered investment advisers" who are not located in the state to register with the department

#### Depositing Fees and Filing Documents Electronically

The department has no express authority to allow dealers, associated persons, or investment advisers to deposit registration fees and file registration documents electronically

#### Anti-Fraud Trust Fund

The Anti-Fraud Trust Fund exists within the department to be used for investigation and prosecution of civil and criminal actions arising under ch. 517, F.S. According to the department, as of November 30, 1997, the balance of the trust fund was \$2,055,663. During the 1997-1998 fiscal year, the Legislature appropriated \$399,532 to the department.

#### The Philanthropy Protection Act of 1995

Currently, the state requires charitable organizations to register with the department. According to the Philanthropy Protection Act of 1995, the U S Congress exempted charitable organizations from the registration requirements of the state, unless the state adopted specific language to require charitable organizations to register as broker-dealers. According to the department, there are 179 registered investment companies. Of these, 36 reside in Florida, and of that 36, only about five are considered charitable organizations.

## B. EFFECT OF PROPOSED CHANGES

#### The National Securities Markets Investment Act of 1996

HB 3239 would implement a number of changes in state securities law in response to the NSMIA. These include the following.

- A "federal covered investment adviser" would no longer be required to register with the department, however, the department would require these investment advisers to submit a notice filing. This notice would consist of a copy of those documents that are required to be filed with the Securities and Exchange Commission, along with a processing and filing fee of \$200. In conforming to NSMIA, Florida law would be amended to preclude the department from requiring a "federal covered investment adviser" to register its branch offices or agents unless they have a physical presence in the state. The department would also retain its authority to investigate fraud or deceit on the part of those subject to notice requirements. Any person who is the associated person of an investment adviser would be prohibited from registering with the department unless the investment adviser has either registered or filed notice with the department.

- Transactions by a registered dealer involving a "federal covered security" would be exempt from the registration requirements of s. 517.07, F.S.

#### Depositing Fees and Filing Documents Electronically

if the department chose to exercise the authority to adopt rules to allow dealers, associated persons and investment advisers to file electronically, then dealers, associated persons and investment advisers could deposit registration fees and registration documents electronically

#### Anti-Fraud Trust Fund

The permitted uses of the monies in the Ant-Fraud Trust Fund would be broadened to include costs associated with the investigation and prosecution of administrative actions arising from the provisions of ch 517, F.S , instead of just civil and criminal actions as is now the case A sum of \$75,000 will be appropriated from the Anti-Fraud Trust Fund to be used to improve the public's awareness of prudent investing.

#### The Philanthropy Protection Act of 1995

Under the Philanthropy Protection Act of 1995, the state would be required to adopt specific language to require charitable organizations to register with the department to offer securities for sale in the state. The state would maintain the authority to require charitable organizations to register with the department.

Additional changes are described in the "Section By Section" research (Section E) of this document.

### C. APPLICATION OF PRINCIPLES

#### 1. Less Government:

- a Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The department will make rules regarding procedures for depositing fees and filing documents electronically.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes "Federal covered investment advisers" will now be required to file notice with the department, but will no longer be required to register with the department pursuant to the changes effected by the enactment of NSMIA.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes:

a Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4 Individual Freedom

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5 Family Empowerment

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss 517.021, 517.051, 517.061, 517.081, 517.082, 517.12, 517.1205, 517.131, 517.161, 517.302, and 517.311, F.S

Creates s 517.1201, F.S.

E. SECTION-BY-SECTION RESEARCH:

**Section 1.** Amends s 517.021, F.S., to expand the definition of "associated person" to include dealer or investment adviser. Defines "federal covered investment adviser". Exempts "federal covered investment adviser" from the definition of investment adviser.

**Section 2.** Amends s. 517.051, F.S., to require charitable organizations to register with the department for a permit to sell securities.

**Section 3.** Amends s 517.061, F.S., to include an exemption for transactions by a registered dealer involving "federal covered securities" from the registration requirements of s. 517.07, F.S. Exempts any nonissuer transaction by a registered associated person of a registered dealer and any resale transaction by a sponsor of a unit investment trust from the registration requirements of s. 517.07, F.S., if at the time of the transaction certain specified conditions are satisfied.

**Section 4.** Amends s. 517.081, F.S., to allow the department to establish procedures by rule to allow those registering securities with the department to deposit registration fees and file registration documents electronically. Removes an obsolete reference.

**Section 5.** Amends s. 517.082, F.S., removing an obsolete reference to the Investment Company Act of 1940. Allows the department to establish procedures by rule for depositing fees and filing documents electronically.

**Section 6.** Amends s. 517.12, F.S., to prohibit the department from registering any person as an associated person of an investment adviser unless the investment adviser

has either filed notice or registered with the state. Allows the department to establish procedures by rule for depositing fees and filing documents electronically. Requires all dealers, except certain securities dealers, to comply with the net capital and ratio requirements of the Securities Exchange Act of 1934.

**Section 7.** Creates s. 517.1201, F.S., to require that any person who does business in this state as a "federal covered investment adviser" to file notice with the department. Providing for payment of \$200 filing fee and a \$200 annual renewal fee. Allows the department to establish procedures by rule for the electronic filing of documents and depositing of fees.

**Section 8.** Amends s. 517.1205, F.S., to include "federal covered investment adviser" in the declaration of intent by the Legislature that the registration of associated persons required by law is specific to the securities dealer and investment adviser identified at the time the registration is approved.

**Section 9.** Amends s. 517.131, F.S., to include assessment fees for "federal covered investment advisers" as part of the 20 percent of revenues received as assessment fees that are required to be allocated to the Securities Guaranty Fund.

**Section 10.** Amends s. 517.161, F.S., authorizes the department to revoke, deny or suspend the registration of any dealer, investment adviser, associated person or branch office that has violated any rule or regulation of any national securities, commodities or options exchange or association.

**Section 11.** Amends s. 517.302, F.S., allowing funds deposited in the Anti-Fraud Trust Fund with the department to be used to improve "the public's awareness and understanding of prudent investing."

**Section 12.** Amends s. 517.311, F.S., to make it unlawful for "federal covered investment advisers" to make false representations as to their abilities or qualifications.

**Section 13.** Effects for an appropriation of \$75,000 from the Anti-Fraud Trust Fund for fiscal year 1998-1999 to be used "to improve the public's awareness and understanding of prudent investing."

**Section 14.** Provides that this act shall take effect upon becoming law.

### III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

##### 1. Non-recurring Effects:

N/A

##### 2. Recurring Effects:

According to the department, revenues to the General Revenue Fund will decrease by \$70,000, since the department will no longer collect the \$100 fee for the 70 branch offices of "federal covered investment advisers," and by \$144,000 since the



department will no longer collect the \$40 from 3,600 agents who have no physical presence in the state. This fiscal impact is not a direct function of HB 3239, but rather a result of the NSMIA.

The expenditures from the Anti-Fraud Trust Fund will increase by \$75,000 for consumer awareness. According to the department, \$60,000 will be allocated for expenses and \$15,000 will be allocated for OPS

General Revenue Fund	<u>1997-1998</u> (\$214,000)
Anti-Fraud Trust Fund	<u>(\$75,000)</u> (\$289,000)

3 Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures.

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects.

N/A

2. Recurring Effects.

N/A

3 Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

"Federal covered investment advisers" would be required to pay a \$200 notice fee, although they have been paying a \$200 registration fee. Therefore, one fee would be replaced by another of an equal amount.

2. Direct Private Sector Benefits:

As mandated by the NSMIA, "federal covered investment advisers" will not be required to register their branch offices or their agents who have no physical presence in the state. According to the department, this will result in a savings of

\$214,000 Also, by conforming to federal law, confusion will minimized from different statutory language

3 Effects on Competition, Private Enterprise and Employment Markets

N/A

D. FISCAL COMMENTS.

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION.

A. APPLICABILITY OF THE MANDATES PROVISION.

N/A

B REDUCTION OF REVENUE RAISING AUTHORITY.

N/A

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS.

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

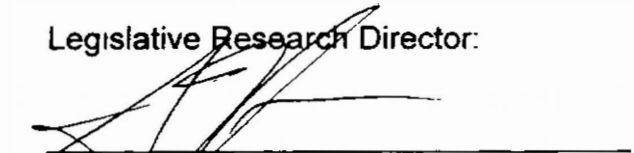
N/A

VII. SIGNATURES:

COMMITTEE ON Financial Services  
Prepared by:

  
Meredith Woodrum Snowden

Legislative Research Director:

  
Stephen Hogge





**STORAGE NAME.** h3239a fs  
**DATE** January 8, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #** HB 3239  
**RELATING TO** Securities Transactions  
**SPONSOR(S).** Representatives Thrasher, Lippman and others  
**COMPANION BILL(S):** SB 510 (s)  
**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**  
(1) FINANCIAL SERVICES YEAS 10 NAYS 0  
(2)  
(3)  
(4)  
(5)

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**I. SUMMARY:**

In general, HB 3239 conforms state law to the National Securities Markets Improvement Act enacted by Congress in 1996, as follows

- A "federal covered investment adviser" would no longer be required to register with the Department of Banking and Finance (the department). A "federal covered investment adviser" handles more than \$25 million in assets
- The department would retain authority to investigate fraud or deceit and bring enforcement actions, but would no longer regulate "federal covered investment advisers"
- Any "federal covered investment adviser" would not be required to register their branch offices or their agents who do not have a physical presence in the state

As a result of HB 3239, a "federal covered investment adviser" would be required to file notice with the department and pay a filing fee. The department would be authorized to establish procedures by rule for depositing fees and filing documents electronically. Charitable organizations that offer securities for sale would continue to be required to register with the department.

As part of this bill of HB 3239, \$75,000 would be appropriated from the Anti-Fraud Trust Fund to be used to improve the public's awareness of prudent investing

## II SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION.

#### The National Securities Markets Improvement Act

In 1996, the U S Congress passed the National Securities Markets Improvement Act (NSMIA) The NSMIA effected a number of revisions to federal securities law which impacted the regulation of securities and investment advisers by the Florida Department of Banking and Finance (the department). These include the following changes:

- preempting state regulation of "federal covered investment advisers" managing more than \$25 million in assets;
- permitting states to require "federal covered investment advisers" to file notice with state regulatory authorities;
- limiting the ability of the state to impose regulatory standards exceeding those of the state where the investment adviser maintains his or her principle place of business; and
- preempting the authority of the state to require the registration of a transaction involving "federal covered securities" by a registered dealer

Congress did not alter existing state authority to investigate fraud or deceit and bring enforcement actions against both federal covered and non-covered investment advisers

The department implemented many other necessary changes through rulemaking and achieved compliance with others through legislation enacted during the 1997 legislative session.

Prior to the passage of the NSMIA, Florida Statutes required a "federal covered investment adviser" to register with the department. Included in registration documents were the name and address of the applicant, articles of incorporation (if applicable), names of associated persons to be employed, the names of any officers or partners, and any character references. An investment adviser is also required to be found to be of "good repute and character" by the department and must demonstrate knowledge of the law and the industry through testing requirements. The department required a registration fee of \$200. According to the department, there are 1,905 investment advisers registered in Florida. Of that 1,905, the department estimates that approximately 743, or 39 percent, are "federal covered investment advisers."

After the enactment of the NSMIA, the state can no longer require "federal covered investment advisers" to register with the department. However, states do have the discretion to require "federal covered investment advisers" to file notice with state regulators (i e , the department) before the "federal covered investment adviser" is eligible to conduct business in the state.

Before the passage of the NSMIA, the department required the registration of associated persons of "federal covered investment advisers" even if these associated persons did not have a place of business in the state. Documentation required for registration

**STORAGE NAME** h3239a.fs

**DATE:** January 8, 1998

**PAGE 3**

included the name and address of the applicant, residential and employment history, and any character references. Associated persons are also required to be found of "good repute and character" by the department and must demonstrate a knowledge of the law and industry through testing requirements. The department required a registration fee of \$40. After the passage of the NSMIA, the state can no longer require associated persons of "federal covered investment advisers" who are not located in the state to register with the department.

#### Depositing Fees and Filing Documents Electronically

The department has no express authority to allow dealers, associated persons, or investment advisers to deposit registration fees and file registration documents electronically.

#### Anti-Fraud Trust Fund

The Anti-Fraud Trust Fund exists within the department to be used for investigation and prosecution of civil and criminal actions arising under ch. 517, F.S. According to the department, as of November 30, 1997, the balance of the trust fund was \$2,055,663. During the 1997-1998 fiscal year, the Legislature appropriated \$399,532 to the department.

#### The Philanthropy Protection Act of 1995

Currently, the state exempts the securities of charitable organizations from the registration requirements of s. 517.07, F.S. Although the securities are themselves exempt, they are required to be sold by a registered dealer pursuant to s. 517.12(2), F.S. In the Philanthropy Protection Act of 1995, the U.S. Congress exempted charitable organizations from having to comply with state registration requirements, unless a state has adopted specific language to require charitable organizations to register as broker-dealers.

### **B EFFECT OF PROPOSED CHANGES.**

#### The National Securities Markets Investment Act of 1996

HB 3239 would implement a number of changes in state securities law in response to the NSMIA. These include the following:

- A "federal covered investment adviser" would no longer be required to register with the department, however, the department would require these investment advisers to submit a notice filing. This notice would consist of a copy of those documents that are required to be filed with the Securities and Exchange Commission, along with a processing and filing fee of \$200. In conforming to NSMIA, Florida law would be amended to preclude the department from requiring a "federal covered investment adviser" to register its agents unless they have a physical presence in the state. The department would also retain its authority to investigate fraud or deceit on the part of those subject to notice requirements. Any person who is the associated person of an investment

adviser would be prohibited from registering with the department unless the investment adviser has either registered or filed notice with the department.

- Transactions by a registered dealer involving a "federal covered security" would be exempt from the registration requirements of s. 517 07, F.S.

#### Depositing Fees and Filing Documents Electronically

If the department chose to exercise the authority to adopt rules to allow dealers, associated persons and investment advisers to file electronically, then dealers, associated persons and investment advisers could deposit registration fees and registration documents electronically

#### Anti-Fraud Trust Fund

The permitted uses of the monies in the Anti-Fraud Trust Fund would be broadened to include costs associated with the investigation and prosecution of administrative actions arising from the provisions of ch 517, F.S , instead of just civil and criminal actions as is now the case. A sum of \$75,000 will be appropriated from the Anti-Fraud Trust Fund to be used to improve the public's awareness of prudent investing.

#### The Philanthropy Protection Act of 1995

Under the Philanthropy Protection Act of 1995, the state would be required to adopt specific language to require charitable organizations to register with the department to offer securities for sale in the state. The state would maintain the authority to require charitable organizations to register with the department

Additional changes are described in the "Section By Section" research (Section E) of this document

### C APPLICATION OF PRINCIPLES:

#### 1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The department will make rules regarding procedures for depositing fees and filing documents electronically.



- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. "Federal covered investment advisers" will now be required to file notice with the department, but will no longer be required to register with the department pursuant to the changes effected by the enactment of NSMIA.

- (3) any entitlement to a government service or benefit?

N/A

- b If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes.

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3 Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4 Individual Freedom

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D STATUTE(S) AFFECTED:

Amends ss 517.021, 517.051, 517.061, 517.081, 517.082, 517.12, 517.1205, 517.131, 517.161, 517.302, and 517.311, F.S.

Creates s. 517.1201, F.S.

E. SECTION-BY-SECTION RESEARCH

**Section 1.** Amends s. 517.021, F.S., to expand the definition of "associated person" to include dealer or investment adviser. Defines "federal covered investment adviser." Exempts "federal covered investment adviser" from the definition of investment adviser

**Section 2.** Amends s. 517.051, F.S., to require charitable organizations to register with the department for a permit to sell securities

**Section 3.** Amends s. 517.061, F.S., to include an exemption for transactions by a registered dealer involving "federal covered securities" from the registration requirements of s. 517.07, F.S. Exempts any nonissuer transaction by a registered

associated person of a registered dealer and any resale transaction by a sponsor of a unit investment trust from the registration requirements of s 517.07, F.S , if at the time of the transaction certain specified conditions are satisfied

**Section 4.** Amends s. 517 081, F S , to allow the department to establish procedures by rule to allow those registering securities with the department to deposit registration fees and file registration documents electronically Removes an obsolete reference.

**Section 5.** Amends s 517 082, F S , removing an obsolete reference to the Investment Company Act of 1940. Allows the department to establish procedures by rule for depositing fees and filing documents electronically

**Section 6.** Amends s 517.12, F S., to prohibit the department from registering any person as an associated person of an investment adviser unless the investment adviser has either filed notice or registered with the state Allows the department to establish procedures by rule for depositing fees and filing documents electronically Requires all dealers, except certain securities dealers, to comply with the net capital and ratio requirements of the Securities Exchange Act of 1934.

**Section 7.** Creates s 517 1201, F S., to require that any person who does business in this state as a "federal covered investment adviser" to file notice with the department. Providing for payment of \$200 filing fee and a \$200 annual renewal fee Allows the department to establish procedures by rule for the electronic filing of documents and depositing of fees

**Section 8.** Amends s 517.1205, F.S., to include "federal covered investment adviser" in the declaration of intent by the Legislature that the registration of associated persons required by law is specific to the securities dealer and investment adviser identified at the time the registration is approved.

**Section 9.** Amends s 517 131, F.S , to include assessment fees for "federal covered investment advisers" as part of the 20 percent of revenues received as assessment fees that are required to be allocated to the Securities Guaranty Fund.

**Section 10.** Amends s 517.161, F.S , authorizes the department to revoke, deny or suspend the registration of any dealer, investment adviser, associated person or branch office that has violated any rule or regulation of any national securities, commodities or options exchange or association

**Section 11.** Amends s 517 302, F S , allowing funds deposited in the Anti-Fraud Trust Fund with the department to be used to improve "the public's awareness and understanding of prudent investing

**Section 12.** Amends s 517 311, F S , to make it unlawful for "federal covered investment advisers" to make false representations as to their abilities or qualifications.

**Section 13.** Effects for an appropriation of \$75,000 from the Anti-Fraud Trust Fund for fiscal year 1998-1999 to be used "to improve the public's awareness and understanding of prudent investing "

**Section 14.** Provides that this act shall take effect upon becoming law

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1. Non-recurring Effects.

For fiscal year 1998-1999, the bill would appropriate an additional \$75,000 to the Anti-Fraud Trust Fund to be used "to improve the public's awareness and understanding of prudent investing." According to the department, \$60,000 will be allocated for expenses and \$15,000 will be allocated for OPS

2. Recurring Effects.

N/A

3. Long Run Effects Other Than Normal Growth

N/A

4. Total Revenues and Expenditures:

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring Effects:

N/A

2. Recurring Effects.

N/A

3. Long Run Effects Other Than Normal Growth

N/A

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs

"Federal covered investment advisers" would be required to pay a \$200 notice fee, although they have been paying a \$200 registration fee. Therefore, one fee would be replaced by another of an equal amount.

STORAGE NAME. h3239a.fs

DATE. January 8, 1998

PAGE 10

2. Direct Private Sector Benefits:

By conforming to federal law, confusion will be minimized from different statutory language. Also, through the public awareness campaign additional sources of information regarding prudent investing will be made available to the public

3 Effects on Competition, Private Enterprise and Employment Markets:

N/A

D FISCAL COMMENTS

N/A

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION.

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES.

At its meeting on January 6, 1998, the Committee on Financial Services adopted one amendment to HB 3239

Amendment #1 changes an "or" to an "and" on page 8 of this bill. This change increases the number of conditions that must be met to exempt a nonissuer transaction and a resale transaction by a sponsor of a unit investment trust from the registration requirements of the department

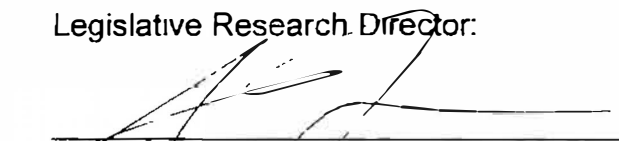
**STORAGE NAME** h3239a fs  
**DATE.** January 8, 1998  
**PAGE 11**

VII SIGNATURES.

COMMITTEE ON FINANCIAL SERVICES  
Prepared by.

  
Meredith Woodrum Snowden

Legislative Research Director:

  
Stephen Hogge

Bill No. HB 3239, 1st Eng.

Amendment No.       

CHAMBER ACTION

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Senator Horne moved the following amendment:

**Senate Amendment**

On page 3, lines 17-20, delete those lines

and insert: Investment Advisers Act of 1940. The term  
"federal covered adviser" does not



Bill No. HB 3239, 1st Eng.

Amendment No.     

CHAMBER ACTION

Senate

House

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18      2380

Senator Horne moved the following amendment:

**Senate Amendment**

On page 13, lines 22-29, delete those lines

and insert:

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice filing with the department pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the department pursuant to this section. The department shall not register any person or an associated person of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the applicant seeks