

regulation, examination, and investigation of broker dealers, associated persons, branch offices, and investment advisors and the registration of securities under the jurisdiction of ch. 517, F.S.

The OFR is authorized to investigate and seek injunctive relief and other remedies, including restitution.² In addition to being able to deny, revoke, restrict or suspend the registration of dealers, investment advisers, associated persons and branch offices for violations of ch. 517, F.S. The OFR is authorized to bring administrative action against any person engaged in, or about to engage in any act or practice constituting a violation of the chapter. The OFR is authorized to impose and collect administrative fines of up to \$5,000 per violation against a person who has violated any provision of ch. 517, F.S., any rule or order of the OFR, or any agreement entered into between the person and the OFR.³

Violations of certain provisions of this chapter can be prosecuted as a third degree felony, and for certain actions, if statutorily prescribed monetary and violation repetition thresholds are reached, such violations can be prosecuted as first-degree felonies.⁴ Violations of criminal provisions of the act may be prosecuted by the state attorney with jurisdiction or by the statewide prosecutor if the crime is multi-jurisdictional, at the direction or request of the OFR. Typically, the OFR will request the Attorney General’s Statewide Prosecutor or a local state attorney to prosecute warranted criminal violations of ch. 517, F.S.

Results of the Office of Financial Regulation in Regulating the Securities Industries

A major emphasis of the Securities Bureau in the Office of Financial Regulation and its predecessor, the Division of Securities and Finance in the Department of Banking and Finance is to be knowledgeable about the securities industries, develop industry trends and assessments, utilize complaints, examinations, and investigations to detect inappropriate practices, develop remedial action aimed at deterring future violations, and aid consumers in recoveries when feasible. According to the OFR, restitution of \$2.56 million has been paid to victims during the period of 1999-2003 in cases completed by the Securities Bureau. The table below summarizes the cases resulting in violations of the Florida securities laws that were worked by the Securities Bureau.

Year	Criminal Cases Brought by Securities	Criminal Actions Taken	Administrative Final Orders Issued
1999	1	1	8
2000	2	2	25
2001	4	4	25
2002	3	3	22
2003	8	8	16

² Section 517.191, F.S. (2003)

³ Section 517.221, F.S. (2003)

⁴ See s. 517.275, F.S., relating to commodities violations regulated federally through the Federal Commodity Exchange Act, 7 U.S.C. ss. 1 et seq.; s. 517.301, F.S., relating to fraudulent transactions; s. 517.311, F.S., relating to false representations in issuing or selling securities; and s. 517.312, F.S., providing for rescission and recovery of damages for fraudulent transactions, false representations and unlawful boiler room practices. s. 517.021 (3), F.S.

The table below summarizes the cases involving violations of the Florida securities laws that were worked by the Bureau of Investigations within the OFR and resulted in restitution for victims in the amount of \$3.97million for the following years:

Year	Securities Cases Brought by Investigations	Court Ordered Restitution	Voluntary Restitution
1999	64	\$20,679,211	\$427,253
2000	31	\$88,304,091	\$2,449,152
2001	42	\$70,951,506	\$34,900
2002	94	\$29,012,574	\$875,184
2003	54	\$201,868,534	\$185,602

For the period of July 1, 1998 through June 30, 2003, the OFR referred 176 cases to the following state and federal prosecutors and the OFR Legal Office for administrative or criminal violations:

Number of Referrals	Referral To:
1	Florida Attorney General
32	State Attorney General
8	Office of Statewide Prosecutor
88	Legal - Office of Financial Regulation
47	U.S. Attorney General
176	Total Referrals

Department of Legal Affairs

It appears that the only cases for which the Department of Legal Affairs headed by the Attorney General can initiate an investigation on its own for securities violations, without a request by the OFR, is in cases of securities fraud that also violate the Racketeer Influenced and Corrupt Organization Act (RICO), s. 895.02(1)(a)8, F.S. This is contained in provisions of the RICO Act that identify the Department of Legal Affairs as having investigative authority under this statute.⁵

Office of Statewide Prosecution

The Office of Statewide Prosecution (OSP) was created by constitutional amendment approved by Florida voters in 1986. Article IV, s. 4 of the Florida Constitution, and s. 16.56, F.S., together provide the jurisdiction and authority of the OSP. The OSP is housed within the Department of Legal Affairs. The Statewide Prosecutor is appointed by the Attorney General, and referred by the Judicial Nominating Commission.

The mission of the OSP is to investigate and prosecute multi-circuit organized crime, and to aid other state and local law enforcement officials in their investigations of organized crime. The

⁵ Sections 895.02 (7), 895.06(1), 895.05(9) and 895.07 (1) and (2), F.S. (2003)

OSP has jurisdiction only if the crime has occurred in more than one judicial circuit or is part of a conspiracy in more than one judicial circuit.⁶

Section 16.56, F.S., governs the authority of the OSP. The OSP is authorized to investigate and prosecute the crimes of bribery, burglary, carjacking, home-invasion robbery, usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, narcotics, RICO violations, Anti-Fencing Act violations, Anti-Trust Act violations, certain computer-related crimes, fraud, and certain violations of the Florida Drug and Cosmetic Act.⁷

Many fraudulent acts take place in a multi-circuit manner. Currently, the OFR and federal law enforcement have jurisdiction over investigating unfair and deceptive trade practice cases. The Office of Statewide Prosecution is generally limited to investigating these sorts of cases only where they can also show that these cases violate RICO, the Anti-Fencing Act, and the Florida Antitrust Act.

Statewide Grand Jury Powers and Duties

Current law limits the subject matter jurisdiction of the statewide grand jury to crimes relating to bribery, burglary, carjacking, home-invasion robbery, usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, narcotics, RICO violations, Anti-Fencing Act violations, Anti-Trust Act violations, certain computer-related crimes, fraud, and certain violations of the Florida Drug and Cosmetic Act.⁸ The statewide grand jury is granted broad powers to return indictments and presentations regardless of the county or circuit where the crime was committed or subject to trial.⁹

Money Laundering

Chapter 896 constitutes the Florida Money Laundering Act. The following actions are unlawful: Knowing that property involved in a financial transaction represents proceeds of unlawful activity, to conduct or attempt to conduct a financial transaction involving proceeds of specified unlawful activity with intent to promote specified unlawful activity, or knowing that the transaction is designed to conceal the nature, location, source, ownership, or control of proceeds of specified unlawful activity; or to avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

To transport or attempt to transport a monetary instrument or funds with intent to promote specified unlawful activity, or knowing that the monetary instrument or funds involved in the transportation represent proceeds of unlawful activity and knowing that such transportation is designed to conceal the nature, location, source, ownership, or control of the proceeds of specified unlawful activity or to avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

⁶ See the OSP web page at www.myfloridalegal.com/swp

⁷ Section 16.56(1)(a), F.S. (2003)

⁸ Section 905.34(1) through (9), F.S. (2003)

⁹ Section 905.34(9), F.S. (2003)

To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with intent to promote specified unlawful activity; or to conceal the nature, location, source, ownership, or control of proceeds or property believed to be the proceeds of specified unlawful activity, or to avoid a transaction reporting requirement under state law.¹⁰

Degrees of criminal violations vary based on the amount of the financial transactions, and range from first degree felonies to third degree felonies.¹¹ A violator can also be fined up to \$250,000 or twice the value of the financial transactions, whichever is greater, or more for repeat violations.¹² A civil penalty is also authorized, of up to \$25,000, or the value of the financial transactions, whichever is greater.¹³ Chapter 560, F.S., which relates to the regulation of money transmitters by the OFR, provides that money transmitters are subject to the provisions of ch. 896 F.S., relating to offenses related to financial transactions, and the OFR is authorized to take actions against any money transmitter violating ch. 896, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 16.56, F.S., to authorize the Office of Statewide Prosecution to investigate and prosecute ch. 517, F.S., securities transaction and ch. 896, F.S., money-laundering violations. The Office of Statewide Prosecution would be authorized to investigate and prosecute *any* violation of chs. 517 and 896, F.S. The provision is not limited to the anti-fraud provisions (ss. 517.275, 517.301, 517.311, and 517.312) that are granted to the Attorney General in section 2 of the bill.

Section 2 amends s. 517.191, F.S. to authorize the Attorney General (AG) to investigate and prosecute certain violations of ch. 517, F.S., and any applicable rules adopted, and to obtain injunctive relief and restitution. This bill allows for recovery by the AG of up to \$10,000 for each violation, in addition to costs and attorney's fees. The specific violations cited in this section include sections 517.275 (prohibited commodities' practices), 517.301 (fraudulent transactions), 517.311 (false representations), or 517.312, F.S., (boiler room prohibited practices). Current law already allows the AG to coordinate with the OFR to prosecute securities violations.

The OFR would also continue to have jurisdiction for enforcing these provisions. The OFR's current authority to impose an administrative fine is limited, pursuant to s. 517.221, F.S., to \$5,000 per violation.

Section 3 amends s. 905.34, F.S., to expand the subject matter jurisdiction of the statewide grand jury to include hearing chs. 517 and 896, F.S., violations. Chapters 517 and 896, F.S., relate to securities transactions and money laundering, respectively.

¹⁰ Section 896.101(3), F.S. (2003)

¹¹ Section 896.101(5), F.S. (2003)

¹² Section 896.101(6), F.S. (2003)

¹³ Section 896.101(7), F.S. (2003)

Section 4 provides that this act will take effect July 1, 2004.

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:

None.

B. Private Sector Impact:

The bill may create confusion among the securities industry by creating a duplicative state regulatory scheme. A duplicative regulatory scheme could lead to inconsistent application of the law and duplicative efforts by the Attorney General and the OFR without a clear mechanism to coordinate cases. For example, the bill allows the Attorney General to levy administrative fines at a greater level (\$10,000 per violation) than the authority granted to OFR (\$5,000 per violation). The bill allows the Statewide Prosecutor the authority to prosecute *any* violation of ch. 517, F.S. This authority would not be limited to the anti-fraud provisions that would be granted to the Attorney General under section 2 of the bill. The Office of the Statewide Prosecutor can already prosecute *criminal* violations of ch. 517, F.S.

The Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers and the Office of Financial Regulation already regulate the securities industry in Florida. The bill adds an additional regulator for the securities industry. Since the passage of the National Securities Markets Improvement Act in 1996, there have been numerous attempts at the federal level to preempt state securities regulation. Some stakeholders contend that by maintaining the regulatory authority of the OFR and yet increasing the enforcement authority of the Attorney General will encourage additional state preemption at the federal level.

C. Government Sector Impact:

The bill could result in some overlap of enforcement activity or duplication of effort between the Office of the Attorney General and the Office of Financial Regulation since

both agencies would have the authority to bring action for certain violations of ch. 517, F.S.

This bill is expected to have an indeterminate impact on revenues and expenditures, and there may be a slight impact on the Department of Legal Affairs, contingent on any increase in cases.

VI. Technical Deficiencies:

Under the rules of statutory construction, a section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is reenacted (republished). Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment. Section 16.56, F.S., as revised by this bill, is cross-referenced in s. 92.605, F.S., which provides for a law enforcement officer to seek certain court orders and subpoenas. Section 16.56, F.S., is also cross-referenced in s. 896.101, F.S., which relates to the state money laundering act, and the issuance of certain subpoenas. These sections may need to be republished in order to incorporate the amendments to s. 16.56, F.S.

VII. Related Issues:

Legislation was enacted in 2002 that reassigned the statutory duties of the Comptroller and Treasurer to the newly created Department of Financial Services, headed by the Chief Financial Officer, and to the Financial Services Commission, whose members are the Governor and Cabinet, effective January 7, 2003. (ch. 2002-404, L.O.F.) The reorganization of the former Department of Banking and Finance and the former Department of Insurance which was enacted in 2002 was designed in part to separate the regulatory functions from the elected official. The 2002 act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services, headed by the Chief Financial Officer, and the Financial Services Commission (“commission”), headed by the Governor and Cabinet. Two offices were created under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation, each headed by a director appointed by the commission. The 2002 act provided that the Office of Financial Institutions and Securities Regulation:

... shall be responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. (s. 20.121(3)(a)2., F.S.)

Senate Bill 2224 appears to restore some direct oversight of the securities industry by an elected official.

VIII. Amendments:

None.