

## CHAPTER 98-82

### Senate Bill No. 2122

An act relating to securities transactions; amending s. 517.12, F.S.; limiting certain assessment fee reductions under certain circumstances; amending s. 517.1203, F.S.; providing for allocations from the Securities Guaranty Fund for certain purposes; providing for certain additional disbursements from the fund; extending the period for filing claims; creating s. 517.1204, F.S.; creating the Investment Fraud Restoration Financing Corporation; providing purposes; providing for a board of directors; providing powers and duties of the corporation; authorizing the department and the corporation to enter into service contracts for certain purposes; authorizing the corporation to issue evidences of indebtedness for payment of certain claims; providing requirements and limitations; authorizing the corporation to validate bond obligations; exempting the corporation from certain taxes and assessments; providing application; prohibiting benefits or earnings of the corporation from inuring to private persons; providing for reversion of corporate property to the Securities Guaranty Fund upon dissolution of the corporation; providing for the State Board of Administration to be trustee of the corporation's securities; authorizing the Auditor General to conduct an audit of the corporation; amending s. 517.131, F.S.; providing a limitation on allocations from the Securities Guaranty Fund under certain circumstances; providing an effective date.

WHEREAS, it is a fundamental regulatory duty of the Division of Securities and Investor Protection of the Department of Banking and Finance to ensure the integrity of the Florida securities market in accordance with chapter 517, Florida Statutes, and

WHEREAS, it is the duty of the Division of Securities and Investor Protection to successfully conduct investigations of fraudulent securities transactions and to discover falsification or concealment of facts for the benefit of the investing public, and

WHEREAS, during the period beginning in April 1985 through October 1985, personnel in the Division of Securities and Investor Protection, with regard to investors doing business with GIC Government Securities, Inc., were remiss in permitting the sale of securities which should not have been allowed to be sold pursuant to chapter 517, Florida Statutes, and failed to prevent the falsification or concealment of facts, and

WHEREAS, as a result of that failure, over 1,300 Florida citizens, many of whom were elderly, lost their life savings or suffered devastating monetary losses because of doing business with GIC Government Securities, Inc., which at the time was inadequately regulated by the Division of Securities and Investor Protection, and

WHEREAS, the victimization by GIC Government Securities, Inc., of investors has harmed the integrity of the Florida securities market as well as the trust vested in the state to regulate this market, and

WHEREAS, such harm threatens the viability of these markets and consequently the economic welfare of the state and its citizens, and

WHEREAS, the Legislature has sought to repair the harm these fraudulent securities activities have inflicted on the integrity of the Florida securities market and the trust vested in the state to regulate this market by establishing a program to reimburse these victims for unrecoverable losses due to unsatisfied judgments and unrecompensable bankruptcy claims, and

WHEREAS, many of the victims of GIC Government Securities, Inc., were unable to obtain adequate reimbursement for claims filed with the Securities Guaranty Fund under s. 517.131, Florida Statutes, and

WHEREAS, many of the victims of GIC Government Securities, Inc., obtained judgments which were unsatisfied, failed to be recompensed by the bankruptcy courts, and were unable to obtain adequate reimbursement from the Securities Guaranty Fund under s. 517.131, Florida Statutes, and

WHEREAS, the Legislature created s. 517.1203, Florida Statutes, for the purpose of reimbursing victims of GIC Government Securities, Inc., for the full amount of their monetary losses, and

WHEREAS, annual revenues allocated to reimburse victims of GIC Government Securities, Inc., are limited and have proven insufficient to meet claims as they are approved, and

WHEREAS, many of the victims of GIC Government Securities, Inc., are elderly and may not live long enough to have funds sufficient to reimburse them become available, and

WHEREAS, it is necessary to fulfill the intent and purposes of chapter 517, Florida Statutes, and further it is hereby determined to be in the best interest of, and necessary for the protection of, the public health, safety, and general welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation to assist in reimbursing the victims of GIC Government Securities, Inc., and to authorize the department to enter into one or more service contracts with such corporation for the provision of financing services related to such functions and to make payments thereunder from the amount on deposit in the Securities Guaranty Fund, subject to annual appropriation by the Legislature, and

WHEREAS, to achieve these purposes and in order to facilitate and expedite the remedial measures instituted by the Legislature with respect to the victims of GIC Government Securities, Inc., it is in the best interest of the residents of this state to authorize such corporation to issue evidences of indebtedness payable from amounts paid by the Department of Banking and Finance under any such service contract entered into between the department and such corporation, and

WHEREAS, the Legislature is taking this action only after balancing all the competing needs of the state, NOW, THEREFORE,

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

Section 1. Subsection (10) of section 517.12, Florida Statutes, is amended to read:

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

(10) An applicant for registration shall pay an assessment fee of \$200, in the case of a dealer or investment adviser, or \$40, in the case of an associated person. The assessment fee of an associated person shall be reduced to \$30 but only after the department determines upon a determination, by final order of the department, that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2) and after all amounts payable under any service contract entered into by the department pursuant to s. 517.1204, and all notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness secured by such notes, bonds, certificates of indebtedness, or other obligations, have been paid or provision has been made for the payment of such amounts, notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness. An associated person not having current fingerprint cards filed with the National Association of Securities Dealers or a national securities exchange registered with the Securities and Exchange Commission shall be assessed an additional fee to cover the cost for said fingerprint cards to be processed by the department. Such fee shall be determined by rule of the department. Each dealer and each investment adviser shall pay an assessment fee of \$100 for each office in this state, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

Section 2. Section 517.1203, Florida Statutes, is amended to read:

517.1203 Allocation and disbursement of assessment fees.—

(1) ~~Notwithstanding s. 517.131(1) and until the department determines by final order that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to this section to satisfy all valid claims filed in accordance with subsection (2),~~ an additional amount equal to 25 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) from persons applying for or renewing registrations as associated persons shall be allocated to the Securities Guaranty Fund and disbursed as provided in this section. This allocation shall continue until the department determines, by final order, that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to this section to satisfy all valid claims filed in accordance with subsection (2) and until all amounts payable under any service contract entered into by the department pursuant to s. 517.1204, and all notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness secured by such notes, bonds, certificates of indebtedness or other obligations, have been paid or provision has been made for the payment of such amounts, notes, bonds, certificates of indebtedness,

other obligations, or evidences of indebtedness. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited into the Securities Guaranty Fund. The moneys allocated to the Securities Guaranty Fund under this section shall not be included in the calculation of the allocation of the assessment fees referred to in s. 517.131(1)(b). Moneys allocated under this section in excess of the valid claims filed pursuant to subsection (2) shall be allocated to the Anti-Fraud Trust Fund.

(2)(a) Notwithstanding the provisions of ss. 517.131 and 517.141, moneys ~~allocated to in~~ the Securities Guaranty Fund ~~under this section~~ shall be used to pay amounts payable under any service contract entered into by the department pursuant to s. 517.1204, subject to annual appropriation by the Legislature, and to pay investors who have filed claims with the Department of Banking and Finance after October 1, 1996, and on or before December 31, 1998 1997, who have:

1. Received a final judgment against an associated person of GIC Government Securities, Inc., based upon allegations which would amount to a violation of s. 517.07 or s. 517.301; or

2. Demonstrated to the department that the claimant has suffered monetary damages as a result of the acts or actions of GIC Government Securities, Inc., or any associated person thereof, based upon allegations which would amount to a violation of s. 517.07 or s. 517.301.

(b)1. Claims shall be paid in the order that they have been filed with the department, unless the department has noticed its intent to deny the claim in whole or in part. If a notice of intent to deny a claim in whole or in part is issued, the claim shall not be paid until a final order has been entered which is not subject to an order staying its effect.

2. If at any time the money in the Securities Guaranty Fund allocated under this section is insufficient to satisfy any valid claim or portion of a valid claim approved by the department under this section, the department shall prorate the payment based upon the ratio that the person's claim bears to the total approved claims filed on the same day. The department shall satisfy the unpaid claims as soon as a sufficient amount of money has been deposited in or transferred to the fund as provided in this section.

3. A claimant shall not be substantially affected by the payment of another person's claim.

(c) Claims shall be limited to the amount of the investment, reduced by any amounts received from a bankruptcy proceeding or from any other source. If an investor is deceased, the award shall be made to the surviving spouse. If the investor and surviving spouse are both deceased, the award shall be made pursuant to the laws of descent and distribution. Neither the department nor the Investment Fraud Restoration Financing Corporation shall make payment to assignees, secured parties, lien creditors, or other such entities.

(3) In rendering a determination, the department may rely on records from the bankruptcy proceeding regarding GIC Government Securities, Inc., unless there is good cause to believe that the record is not genuine.

(4) Amounts deposited into the Securities Guaranty Fund pursuant to this section shall be applied to or allocated for payment of amounts payable by the department pursuant to paragraph (2)(a), under a service contract entered into by the department pursuant to s. 517.1204, subject to annual appropriation by the Legislature, before making or providing for any other disbursements from the fund.

Section 3. Section 517.1204, Florida Statutes, is created to read:

517.1204 Investment Fraud Restoration Financing Corporation.—

(1) The Investment Fraud Restoration Financing Corporation is hereby created as a nonprofit public benefit corporation for the purpose of financing the remedial measures instituted by the Legislature with respect to the victims of GIC Government Securities, Inc., and the payment of approved claims pursuant to s. 517.1203. The fulfillment of the purposes of the corporation promotes the health, safety, and general welfare of the people of the state and serves essential governmental functions and a paramount public purpose. The corporation shall terminate on July 1, 2021, or upon fulfillment of all of the purposes of this section, whichever occurs earlier.

(2) The corporation shall be governed by a board of directors consisting of the assistant comptroller, the Secretary of Elderly Affairs or the secretary's designee and the executive director of the Department of Veterans' Affairs or the executive director's designee. The executive director of the State Board of Administration shall be the chief executive officer of the corporation and shall direct and supervise the administrative affairs of the corporation and shall control, direct, and supervise the operation of the corporation. The corporation shall also have such other officers as may be determined by the board of directors.

(3) The corporation shall have all the powers of a corporate body under the laws of this state to the extent not inconsistent with or restricted by the provisions of this section, including, but not limited to, the power to:

(a) Adopt, amend, and repeal bylaws not inconsistent with this section.

(b) Sue and be sued.

(c) Adopt and use a common seal.

(d) Acquire, purchase, hold, lease, and convey such real and personal property as may be proper or expedient to carry out the purposes of the corporation and this section, and to sell, lease, or otherwise dispose of such property.

(e) Elect or appoint and employ such officers, agents, and employees as the corporation deems advisable to operate and manage the affairs of the corporation, which officers, agents, and employees may be officers or employees of the department and the state agencies represented on the board of directors of the corporation.

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness necessary to pay claims approved pursuant to s. 517.1203 payable from the Securities Guaranty Fund.

(g) Make and execute any and all contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and this section.

(h) Select, retain, and employ professionals, contractors, or agents, which may include the Division of Bond Finance of the State Board of Administration, as is necessary or convenient to enable or assist the corporation in carrying out the purposes of the corporation and this section.

(i) Do any act or thing necessary or convenient to carry out the purposes of the corporation and this section and the powers provided in this section.

(4) The corporation is authorized to enter into one or more service contracts with the department pursuant to which the corporation shall provide services to the department in connection with financing the functions and activities provided for in s. 517.1203. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 517.1203(2)(a), subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the costs and expenses of administration of the corporation after payments as set forth in subsection (5). Each service contract shall have a term not to exceed 15 years and shall terminate no later than July 1, 2021. The aggregate amount payable from the Securities Guaranty Fund under all such service contracts shall not exceed the amount provided by s. 517.1203(1). In compliance with provisions of s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts shall not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state nor shall such obligations be construed in any manner as an obligation of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but shall be payable solely from amounts available in the Securities Guaranty Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, such service contracts shall expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of the simultaneous payment of all claims approved pursuant to s. 517.1203. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness shall not exceed 15 years. The corporation may select a financing team and issue obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. Any such indebtedness of the corporation shall not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state, but shall be payable from and secured by payments made by the department under the service contract pursuant to subsection (4).

(6) The corporation shall pay all claims approved pursuant to s. 517.1203 as determined by and at the direction of the department.

(7) The corporation is exempt from taxation and assessments of any nature whatsoever upon its income and any property, assets, or revenues acquired, received, or used in the furtherance of the purposes provided in this chapter. The obligations of the corporation incurred pursuant to subsection (5) and the interest and income on such obligations and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection with, or given to secure payment of such obligations are exempt from all taxation, provided such exemption does not apply to any tax imposed by chapter 220 on the interest, income, or profits on debt obligations owned by corporations.

(8) The corporation may validate any bonds issued pursuant to this section, as provided in chapter 75. The validation complaint shall be filed only in the circuit court for Leon County. The notice required under s. 75.06 shall be published in Leon County and the complaint and order of the circuit court shall be served only on the State Attorney for the Second Judicial Circuit. The provisions of ss. 75.04(2) and 75.06(2) shall not apply to a validation complaint filed as authorized in this subsection. The validation of the first bonds issued pursuant to this section may be appealed to the Supreme Court and such appeal shall be handled on an expedited basis.

(9) The corporation shall not take any action which will materially and adversely affect the rights of holders of any obligations issued under this section as long as such obligations are outstanding.

(10) The corporation shall not be deemed to be a special district for purposes of chapter 189 or a unit of local government for purposes of part III of chapter 218. The provisions of chapters 120 and 215, except the limitation on interest rates provided by s. 215.84 which applies to obligations of the corporation issued pursuant to this section, and part I of chapter 287, except ss. 287.0582 and 287.0641, shall not apply to this section, the corporation created in this section, the service contracts entered into pursuant to this section, or debt obligations issued by the corporation as provided in this section.

(11) In no event shall any of the benefits or earnings of the corporation inure to the benefit of any private person, except those persons identified pursuant to s. 517.1203.

(12) Upon dissolution of the corporation, title to all property owned by the corporation shall revert to the Securities Guaranty Fund.

(13) The corporation may contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation as provided by this section and to hold, administer, and invest proceeds of such debt obligations and other funds of the corporation and to perform other services required by the corporation. The State Board of Administration may perform such services and may contract with others to provide all or a part of such services and to recover the costs and expenses of providing such services.

(14) The Auditor General may conduct a financial audit of the accounts and records of the corporation.

Section 4. Paragraph (a) of subsection (1) of section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Treasurer shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for dealers and investment advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for associated persons shall be allocated to the fund. An additional amount not exceeding 3.5 percent of all revenues received as assessment fees for associated persons pursuant to s. 517.12(10) and (11) shall be allocated to the Securities Guaranty Fund but only after the department determines upon a determination, by final order of the department, that sufficient funds have been allocated to the fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2) and after all amounts payable under any service contract entered into by the department pursuant to s. 517.1204, and all notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness secured by such notes, bonds, certificates of indebtedness or other obligations, have been paid or provision has been made for the payment of such amounts, notes, bonds, certificates of indebtedness, other obligations, or evidences of indebtedness. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor May 21, 1998.

Filed in Office Secretary of State May 21, 1998.