

## **BILL ANALYSIS**

C.S.S.B. 1059  
By: Ellis, Rodney  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent misconduct by corporate officers demonstrates the need for stronger measures for addressing corporate fraud. One purpose of C.S.S.B. 1059 is to create a corporate integrity unit within the office of the attorney general to assist in the investigation and enforcement of the laws relating to corporate fraud or other similar illegal activities.

In addition, there have been documented instances in which the largest shareholders of certain business entities have entered into transactions with interested parties without the consent of a majority of the shareholders. Such arrangements can be detrimental to the financial interests of the business entities and their shareholders. Another purpose of C.S.S.B. 1059 is to prohibit certain business entities from entering into transactions with interested parties that involve more than \$10,000 without the prior approval of a majority of the holders of all ownership interests.

### **RULEMAKING AUTHORITY**

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, institution, or agency.

### **ANALYSIS**

C.S.S.B. 1059 amends Subchapter B, Chapter 402, Government Code, by adding Section 402.0231 to create a corporate integrity unit within the office of the attorney general, to assist in the enforcement of the laws relating to corporate fraud or other similar illegal activities.

The bill requires the corporate integrity unit to:

- assist district and county attorneys in the investigation and prosecution of corporate fraud or other similar illegal activities;
- serve as a clearing house for information related to that subject; and
- assist state agencies with investigation of complaints and administrative enforcement actions for corporate fraud violations.

The bill requires a state agency or local law enforcement agency, to the extent allowed by law, to provide information requested by the corporate integrity unit as necessary to carry out the purposes listed above. The bill provides that such information is confidential and not subject to public disclosure under Chapter 552, Government Code.

The bill provides that the office of the attorney general is not required to implement proposed Section 402.0231, Government Code, unless a specific appropriation is provided in the General Appropriations Act of the 78th Legislature, Regular Session, 2003.

The bill also amends Subchapter D, Chapter 371, Finance Code (Texas Pawnshop Act), by adding Section 371.184 to prohibit a business entity licensed under Chapter 371 from entering into a transaction with an interested party that involves more than \$10,000 without the prior approval of a majority of the

holders of all ownership interests, who are not interested parties, voting together as a single class. This includes holders of all the outstanding shares of capital stock, or other ownership interests, of every class or series, including capital stock or ownership interests not otherwise entitled to vote.

Proposed Section 371.184 would apply only to a publicly traded business entity that:

- makes interest-bearing loans;
- has a single controlling owner; and
- is licensed under Chapter 371, Finance Code.

The bill defines an “interested party” as:

- a shareholder who controls 25% or more of the voting shares;
- a member of the governing body of a business entity;
- an executive officer of a business entity;
- an immediate family member of any of the persons described above; or
- an affiliate of a business entity or of any of the persons described above.

### **EFFECTIVE DATE**

September 1, 2003. Section 371.184, Finance Code, as added by this Act, applies only to a transaction entered into on or after the effective date of the Act.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original bill:

- added a new section relating to contracts with companies and financial disclosures to Subchapter Z, Chapter 2252, Government Code,
- added a new chapter relating to ethics and disclosure requirements for outside financial advisors and service providers to Subtitle F, Title 10, Government Code,
- added Article 5.20, relating to certification of false or misleading financial reports and providing criminal penalties, to Part Five, Texas Miscellaneous Corporation Laws Act, and
- amended Section B, Article 1.03, Texas Miscellaneous Corporation Laws Act, by making conforming changes consistent with the purposes of the Act.

The substitute does not include any of these provisions and deletes references to the provisions elsewhere in the bill.

C.S.S.B. 1059 also differs from the original in that it amends Subchapter D, Chapter 371, Finance Code, as described above. The original bill did not amend the Finance Code.

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