

BILL ANALYSIS

C.S.S.B. 1060
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Pensions & Investments
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Investors witnessed several cases of alleged corporate malfeasance and securities violations during the last several years. To protect investors from future bad acts and allow for better enforcement of the Securities Act, the State Securities Board and the Office of the Attorney General believe certain sections of the Act need to be strengthened.

The bill would expand the definition of a security, allow the Commissioner to provide reciprocal assistance to a securities regulator from another jurisdiction, subject unregistered investment advisers to penal provisions, and allow the Attorney General to seek equitable relief for a victim of fraud and the disgorgement of any economic benefit obtained through fraud.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Subsection A, Section 4, The Securities Act (Article 581-4, VTCS), by clarifying that the term security applies to an instrument whether it is a written document or not.

SECTION 2. Amends Section 28, The Securities Act (Article 581-28, VTCS), adding Subsection C so that the State Securities Board is permitted to issue and apply to enforce a subpoena in this state at the request of a securities agency of another state or foreign jurisdiction. In determining whether to provide assistance, the Commissioner may consider if the request would violate or prejudice the public policy of this state.

SECTION 3. Amends Section 29, The Securities Act (Article 581-29, VTCS), by requiring persons who render services as an investment advisor to register with the State Securities Board. Any person who provides such services and does not register is guilty of a felony and shall be sentenced to pay a fine of no more than \$5,000 and/or be imprisoned in a state penitentiary for two to ten years.

SECTION 4. Amends Section 32, The Securities Act (Article 581-32, VTCS), by amending Subsection B and adding Subsection C by broadening the scope of the Securities Act to permit the state to obtain and the court to grant appropriate equitable relief for victims of fraudulent practices. In an action for the fraudulent sale of a security, the Attorney General may seek, for an aggrieved person, the disgorgement of any economic benefit gained by the defendant through the violation.

SECTION 5. Effective date.

EFFECTIVE DATE

This bill takes effect immediately if it receives a two-thirds vote of all the members of each house.

Otherwise, the bill takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

) A provision in SECTION 2 was moved to another part of the Section for purposes of clarification and statutory construction.

2) On page 6, in SECTION 3, the portion of Section 29.I relating to investment advisers and investment adviser representatives was amended for clarification purposes. Also an investment adviser who fails to submit a notice filing will not be subject to a felony.

3) On page 6, in SECTION 4, when the Attorney General seeks disgorgement, the substitute clarifies he may do so for an aggrieved person.