

By: Solomons

H.B. No. 1840

A BILL TO BE ENTITLED

AN ACT

relating to a fee established and set by the State Securities Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 35, The Securities Act (Article 581-35, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35. FEES. A. The Board shall establish and set the following fees in amounts that are reasonable and necessary so that the fees, in the aggregate, produce sufficient revenue to cover the costs of administering and enforcing this Act:

(1) for the filing of any original, amended, or renewal application to sell or dispose of securities, an amount not to exceed \$100;

(2) for the filing of any original application of a dealer or investment adviser or for the submission of a notice filing for a federal covered investment adviser, an amount not to exceed \$100;

(3) for the filing of any renewal application of a dealer or investment adviser or for the submission of a renewal notice filing for a federal covered investment adviser, an amount not to exceed \$100;

(4) for the filing of any original application for each agent, officer, or investment adviser representative or for the submission of a notice filing for each representative of a federal covered investment adviser, an amount not to exceed \$100;

1 and

2 (5) for the filing of any renewal application for each  
3 agent, officer, or investment adviser representative or for the  
4 submission of a renewal notice filing for each representative of a  
5 federal covered investment adviser, an amount not to exceed \$100.

6 B. The Commissioner or Board shall charge and collect the  
7 following fees and shall daily pay all fees received into the State  
8 Treasury:

9 (1) for [~~A. For the filing of any original application~~  
10 ~~of a dealer or investment adviser or for the submission of a notice~~  
11 ~~filing for a federal covered investment adviser, Seventy-five~~  
12 ~~Dollars (\$75.00), and for the filing of any renewal application of a~~  
13 ~~dealer or investment adviser or for the submission of a renewal~~  
14 ~~notice filing for a federal covered investment adviser, Forty~~  
15 ~~Dollars (\$40.00);~~

16 [~~B. For the filing of any original application for each~~  
17 ~~agent, officer, or investment adviser representative or for the~~  
18 ~~submission of a notice filing for each representative of a federal~~  
19 ~~covered investment adviser, Thirty-five Dollars (\$35.00), and for~~  
20 ~~the filing of any renewal application for each agent, officer, or~~  
21 ~~investment adviser representative or for the submission of a~~  
22 ~~renewal notice filing for each representative of a federal covered~~  
23 ~~investment adviser, Twenty Dollars (\$20.00);~~

24 [~~C. For~~] any filing to amend the registration certificate of  
25 a dealer or investment adviser or evidence of registration of an  
26 agent or investment adviser representative, issue a duplicate  
27 certificate or evidence of registration, or register a branch

1 office, \$25 [~~Twenty-five Dollars (\$25.00)~~];

2 (2) for [~~D. For the filing of any original, amended~~  
3 ~~or renewal application to sell or dispose of securities, Ten~~  
4 ~~Dollars (\$10.00)~~];

5 [~~E. For~~] the examination of any original or amended  
6 application filed under Subsection A, B, or C of Section 7 of this  
7 Act, regardless of whether the application is denied, abandoned,  
8 withdrawn, or approved, a fee of one-tenth (1/10) of one percent  
9 (1%) of the aggregate amount of securities described and proposed  
10 to be sold to persons located within this state based upon the price  
11 at which such securities are to be offered to the public;

12 (3) for [~~F. For~~] certified copies of any papers filed  
13 in the office of the Commissioner, the Commissioner shall charge  
14 such fees as are reasonably related to costs; however, in no event  
15 shall such fees be more than those which the Secretary of State is  
16 authorized to charge in similar cases;

17 (4) for [~~G. For~~] the filing of any application for  
18 approval of a stock exchange so that securities fully listed  
19 thereon will be exempt, a fee of \$10,000 [~~Ten Thousand Dollars~~  
20 ~~(\$10,000.00)~~];

21 (5) for [~~H. For~~] the filing of a request to take the  
22 Texas Securities Law Examination, \$35 [~~Thirty-five Dollars~~  
23 ~~(\$35.00)~~];

24 (6) for [~~I. For~~] the filing of an initial notice  
25 required by the Commissioner to claim a secondary trading  
26 exemption, a fee of \$500 [~~Five Hundred Dollars (\$500.00)~~], and for  
27 the filing of a secondary trading exemption renewal notice, a fee of

1 \$500 [~~Five Hundred Dollars (\$500.00)~~];

2 (7) for [~~J. For~~] the filing of an initial notice  
3 required by the Commissioner to claim a limited offering exemption,  
4 a fee of one-tenth (1/10) of one percent (1%) of the aggregate  
5 amount of securities described as being offered for sale, but in no  
6 case more than \$500 [~~Five Hundred Dollars (\$500.00)~~]; and

7 (8) for [~~K. For~~] an interpretation by the Board's  
8 general counsel of this Act or a rule adopted under this Act, a fee  
9 of \$100 [~~One Hundred Dollars (\$100.00)~~], except that an officer or  
10 employee of a governmental entity and the entity that the officer or  
11 employee represents are exempt from the fee under this subsection  
12 when the officer or employee is conducting official business of the  
13 entity.

14 C. The Board may not set a fee under this section for an  
15 amount less than the amount of that fee on September 1, 2003. In  
16 setting the amounts of the fees authorized by this section, the  
17 Board may not maintain unnecessary fund balances.

18 D. A cost incurred by the Board in administering this Act  
19 may be paid only from a fee collected under Subsection A of this  
20 section.

21 SECTION 2. Section 35-1, The Securities Act (Article  
22 581-35-1, Vernon's Texas Civil Statutes), is amended to read as  
23 follows:

24 Sec. 35-1. FEES FOR SALES OF EXCESS SECURITIES. A. An  
25 offeror who sells securities in this State in excess of the  
26 aggregate amount of securities registered for the offering may  
27 apply to register the excess securities by paying three times the

1 difference between the initial fee paid and the fee required under  
2 Subsection B(2) [~~E~~] of Section 35, plus, if the registration is no  
3 longer in effect, interest on that amount computed at the rate  
4 provided by Section 302.002, Finance Code, from the date the  
5 registration was no longer in effect until the date the subsequent  
6 application is filed, for the securities sold to persons within  
7 this State, plus the amendment fee prescribed by Subsection A(1)  
8 [~~D~~] of Section 35. Registration of the excess securities, if  
9 granted, shall be effective retroactively to the effective date of  
10 the initial registration for the offering.

11 B. An offeror who has filed a notice to claim a limited  
12 offering exemption, who paid less than the maximum fee prescribed  
13 in Subsection B(7) [~~J~~] of Section 35, and who offered a greater  
14 amount of securities in the offering than authorized pursuant to  
15 the formula prescribed in Subsection B(7) [~~J~~] of Section 35, may  
16 file an amended notice disclosing the amount of securities offered  
17 and paying three times the difference between the fee initially  
18 paid and the fee which should have been paid, plus interest on that  
19 amount computed at the rate provided by Section 302.002, Finance  
20 Code, from the date the original notice was received by the  
21 Commissioner until the date the amended notice is received by the  
22 Commissioner. The amended notice shall be retroactive to the date  
23 of the initial filing.

24 SECTION 3. Section 35-2, The Securities Act (Article  
25 581-35-2, Vernon's Texas Civil Statutes), is amended to read as  
26 follows:

27 Sec. 35-2. FEES FOR SALES OF UNREGISTERED SECURITIES. If,

1 after notice and hearing, the commissioner or any court of  
2 competent jurisdiction finds that an offeror has sold securities in  
3 this State pursuant to an offering no part of which has been  
4 registered under Section 7 or 10 of this Act and for which the  
5 transactions or securities are not exempt under Section 5 or 6 of  
6 this Act, the commissioner or said court may impose a fee equal to  
7 six times the amount that would have been paid if the issuer had  
8 filed an application to register the securities and paid the fee  
9 prescribed by Subsection B(2) [~~E~~] of Section 35 based on the  
10 aggregate amount of sales made in this State within the prior three  
11 years, plus interest on that amount at the rate provided by Section  
12 302.002, Finance Code, from the date of the first such sale made in  
13 this State until the date the fee is paid. The payment of the fee  
14 prescribed by this Section does not effect registration of the  
15 securities or affect the application of any other Section of this  
16 Act. The payment of the fee prescribed by this Section is not an  
17 admission that the transactions or securities were not exempt and  
18 is not admissible as evidence in a suit or proceeding for failure to  
19 register the securities.

20 SECTION 4. This Act takes effect September 1, 2003, and  
21 applies only to a fee that becomes due on or after that date. The  
22 amount of a fee that becomes due before September 1, 2003, is  
23 governed by the law in effect when the fee becomes due, and that law  
24 is continued in effect for that purpose.