

By: Marchant

H.B. No. 2039

A BILL TO BE ENTITLED

AN ACT

relating to corporate ethics and integrity; providing penalties.

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

SECTION 1. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.0231 to read as follows:

Sec. 402.0231. CORPORATE INTEGRITY UNIT. (a) In this section, "corporate fraud" means a violation of state or federal law or rules relating to fraud committed by a corporation, limited liability company, or registered limited liability partnership or an officer, director, or partner of those entities while acting in a representative capacity.

(b) A corporate integrity unit is created 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 unit shall:

(1) assist district attorneys and county attorneys in the investigation and prosecution of corporate fraud or other similar illegal activities allegedly committed by corporations, limited liability companies, and registered limited liability partnerships;

(2) assist state agencies with investigation of complaints and administrative enforcement actions for corporate fraud violations, including the assessment of an administrative penalty or other administrative sanction; and

1 (3) serve as a clearinghouse for information relating
2 to the investigation and prosecution of corporate fraud and other
3 similar illegal activities in this state.

4 (c) To the extent allowed by law, a state agency or local law
5 enforcement agency shall cooperate with the corporate integrity
6 unit by providing information requested by the unit as necessary to
7 carry out the purposes of this section. Information disclosed
8 under this subsection is confidential and not subject to disclosure
9 under Chapter 552.

10 SECTION 2. Subchapter Z, Chapter 2252, Government Code, is
11 amended by adding Section 2252.904 to read as follows:

12 Sec. 2252.904. CONTRACTS WITH COMPANIES; FINANCIAL
13 DISCLOSURES. (a) In this section:

14 (1) "Certified audit" means an audit of the company's
15 books, records, and accounts and the company's systems of internal
16 control performed by an independent certified public accountant in
17 accordance with generally accepted accounting principles and
18 generally accepted auditing standards.

19 (2) "Company" means a corporation, partnership,
20 limited partnership, registered limited liability partnership,
21 trust, association, joint stock company, joint venture, limited
22 liability company, or other form of business organization. The
23 term does not include a sole proprietorship or individual.

24 (3) "Financial irregularity" means an intentional
25 misstatement or omission of information relating to a financial
26 transaction or matter. The term includes embezzlement, fraud, and
27 the falsification of records to misappropriate assets.

1 (4) "Independent certified public accountant" means a
2 certified public accountant who is not affiliated with, is not an
3 employee, principal, or direct or indirect owner of, and is not in
4 any way controlled by the audited company.

5 (5) "State governmental entity" means:

6 (A) a board, commission, department, office, or
7 other agency in the executive branch of state government created
8 under the constitution or a statute of the state, including an
9 institution of higher education as defined by Section 61.003,
10 Education Code;

11 (B) the legislature or a legislative agency; or

12 (C) the Texas Supreme Court, the Texas Court of
13 Criminal Appeals, a court of appeals, a state judicial agency, or
14 the State Bar of Texas.

15 (b) A company that enters into a contract with a state
16 governmental entity shall:

17 (1) immediately report to the entity any financial
18 irregularity relating to the contract or the company's financial
19 position that is detrimental to the interest of the entity; and

20 (2) annually during the contract period submit to the
21 entity a certified audit of the company's operations.

22 (c) The auditor's opinion in an audit required by Subsection
23 (b)(2) must state whether the financial statements of the audited
24 company present fairly, in all material respects and in accordance
25 with generally accepted accounting principles, its financial
26 position and results of operations relating to the obligation,
27 receipt, expenditure, and use of state funds.

1 (d) A company that violates Subsection (b)(1) commits an
2 offense. An offense under this subsection is a Class A misdemeanor.

3 (e) A company that violates Subsection (b)(2) is liable to
4 the state for a civil penalty in an amount not to exceed \$10,000.
5 The attorney general may bring suit to recover the civil penalty
6 imposed under this subsection.

7 SECTION 3. Subtitle F, Title 10, Government Code, is
8 amended by adding Chapter 2263 to read as follows:

9 CHAPTER 2263. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE
10 FINANCIAL ADVISORS AND SERVICE PROVIDERS

11 Sec. 2263.001. APPLICABILITY. (a) This chapter applies in
12 connection with the management or investment of any state funds
13 managed or invested:

14 (1) under the Texas Constitution or other law,
15 including Chapters 404 and 2256; and

16 (2) by or for:

17 (A) a public retirement system as defined by
18 Section 802.001 that provides service retirement, disability
19 retirement, or death benefits for officers or employees of the
20 state;

21 (B) an institution of higher education as defined
22 by Section 61.003, Education Code; or

23 (C) another entity that is part of state
24 government and that manages or invests state funds or for which
25 state funds are managed or invested.

26 (b) This chapter applies in connection with the management
27 or investment of state funds without regard to whether the funds are

1 held in the state treasury.

2 (c) This chapter does not apply to or in connection with a
3 state governmental entity that does not manage or invest state
4 funds and for which state funds are managed or invested only by the
5 comptroller.

6 Sec. 2263.002. DEFINITION. In this chapter, "financial
7 advisor or service provider" includes a financial advisor,
8 financial consultant, money or investment manager, or broker.

9 Sec. 2263.003. CONSTRUCTION WITH OTHER LAW. To the extent
10 of a conflict between this chapter and another law, the law that
11 imposes a stricter ethics or disclosure requirement controls.

12 Sec. 2263.004. ETHICS REQUIREMENTS FOR OUTSIDE FINANCIAL
13 ADVISORS OR SERVICE PROVIDERS. The governing body of a state
14 governmental entity by rule shall adopt standards of conduct
15 applicable to financial advisors or service providers who are not
16 employees of the state governmental entity, who provide financial
17 services to the state governmental entity or advise the state
18 governmental entity or a member of the governing body of the state
19 governmental entity in connection with the management or investment
20 of state funds, and who:

21 (1) may reasonably be expected to receive, directly or
22 indirectly, more than \$10,000 in compensation from the entity
23 during a fiscal year; or

24 (2) render important investment or funds management
25 advice to the entity or a member of the governing body of the
26 entity, as determined by the governing body.

27 Sec. 2263.005. DISCLOSURE REQUIREMENTS FOR OUTSIDE

1 FINANCIAL ADVISOR OR SERVICE PROVIDER. (a) A financial advisor or
2 service provider described by Section 2263.004 shall disclose in
3 writing to the administrative head of the applicable state
4 governmental entity and to the state auditor:

5 (1) any relationship the financial advisor or service
6 provider has with any party to a transaction with the state
7 governmental entity, other than a relationship necessary to the
8 investment or funds management services that the financial advisor
9 or service provider performs for the state governmental entity, if
10 the relationship could reasonably be expected to diminish the
11 person's independence of judgment in the performance of the
12 person's responsibilities to the state governmental entity; and

13 (2) all direct or indirect pecuniary interests the
14 financial advisor or service provider has in any party to a
15 transaction with the state governmental entity, if the transaction
16 is connected with any financial advice or service the financial
17 advisor or service provider provides to the state governmental
18 entity or to a member of the governing body in connection with the
19 management or investment of state funds.

20 (b) The financial advisor or service provider shall
21 disclose a relationship described by Subsection (a) without regard
22 to whether the relationship is a direct, indirect, personal,
23 private, commercial, or business relationship.

24 (c) A financial advisor or service provider described by
25 Section 2263.004 shall file annually a statement with the
26 administrative head of the applicable state governmental entity and
27 with the state auditor. The statement must disclose each

1 relationship and pecuniary interest described by Subsection (a), if
2 any.

3 (d) The annual statement must be filed not later than
4 February 1 on a form prescribed by the governmental entity, other
5 than the state auditor, receiving the form. The statement must
6 cover the reporting period of the previous calendar year. The state
7 auditor shall develop and recommend a uniform form that other
8 governmental entities receiving the form may prescribe.

9 (e) The financial advisor or service provider shall
10 promptly file a new or amended statement with the administrative
11 head of the applicable state governmental entity and with the state
12 auditor whenever there is new information to report under
13 Subsection (a).

14 Sec. 2263.006. PUBLIC INFORMATION. Chapter 552 controls
15 the extent to which information contained in a statement filed
16 under this chapter is subject to required public disclosure or
17 excepted from required public disclosure.

18 SECTION 4. Section B, Article 1.03, Texas Miscellaneous
19 Corporation Laws Act (Article 1302-1.03, Vernon's Texas Civil
20 Statutes), is amended to read as follows:

21 B. Except to the extent that any provisions of this Act are
22 expressly made inapplicable by any provision of the Texas Business
23 Corporation Act, the Texas Non-Profit Corporation Act, or any
24 special Statute of this State pertaining to a particular type of
25 corporation and except as otherwise provided by Article 5.20 of
26 this Act, this Act shall govern (1) all domestic corporations,
27 including without limitation those corporations heretofore or

1 hereafter organized under any Statute of the State, and (2) only to
2 the extent expressly provided in this Act, all foreign
3 corporations, including without limitation those corporations
4 heretofore or hereafter granted a permit to do business under any
5 Statute of the State.

6 SECTION 5. Part Five, Texas Miscellaneous Corporation Laws
7 Act (Article 1302-5.01 et seq., Vernon's Texas Civil Statutes), is
8 amended by adding Article 5.20 to read as follows:

9 Art. 5.20. CERTIFICATION OF FALSE OR MISLEADING FINANCIAL
10 REPORT; CRIMINAL PENALTY. (a) In this section:

11 (1) "Corporate official" means the president or other
12 chief executive officer, the chief financial officer, or any other
13 officer of or person performing a similar function for a
14 corporation or other company that is required to file a periodic
15 report under Section 13(a) or 15(d), Securities Exchange Act of
16 1934 (15 U.S.C. Sections 78m(a), 78o(d)).

17 (2) "Financial report" means a balance sheet, an
18 income or loss statement, a cash flow statement, or any other
19 presentation of financial information, however denominated,
20 concerning a corporation or other company that is intended to
21 portray a significant portion of the company's financial position.

22 (b) A corporate official who signs a sworn statement
23 certifying that information contained in a financial report fairly
24 represents, as of the period presented in the report, the financial
25 condition or results of operation of the company issuing the report
26 commits an offense if the corporate official makes the
27 certification knowing that the report contains false or misleading

1 information that affects or may affect the finances or operations
2 of the issuing company, as appropriate, in any material respect.

3 (c) An offense under this section is a state jail felony.

4 SECTION 6. Each state governmental entity required to adopt
5 rules under Chapter 2263, Government Code, as added by this Act,
6 shall adopt its initial rules in time for the rules to take effect
7 not later than January 1, 2004.

8 SECTION 7. This Act takes effect September 1, 2003.