

By: Shapleigh

S.B. No. 605

A BILL TO BE ENTITLED

AN ACT

relating to certification and audit of a corporate financial report; providing criminal penalties.

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

SECTION 1. Part Five, Texas Miscellaneous Corporation Laws Act (Article 1302-5.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 5.20 to read as follows:

Art. 5.20. AUDIT AND CERTIFICATION OF FINANCIAL REPORT. A. In this Article, "financial report" means a balance sheet, income or loss statement, cash flow statement, or any other presentation of financial information, however denominated, concerning a corporation that is intended to portray a significant portion of the corporation's financial position.

B. (1) Each domestic or foreign corporation doing business in this state that is not a public reporting company under Section 13(a) or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Sections 78m(a), 78o(d)), as amended, shall certify annually in a filing with the State Securities Board that:

(a) each financial report prepared by or for the corporation:

(i) has been reviewed by the officers signing the filing;

(ii) does not contain any untrue statement of material fact or omit a material fact necessary to make the

1 statements made, considering the circumstances under which the
2 statements were made, not misleading; and

3 (iii) fairly presents in all material
4 respects the financial condition and results of operations of the
5 corporation as of, and for, the periods presented in the report; and

6 (b) the officers signing the filing are
7 responsible for establishing and maintaining internal controls and
8 have:

9 (i) designed the internal controls to
10 ensure that material information relating to the corporation is
11 made known to the officers;

12 (ii) evaluated the effectiveness of the
13 internal controls as of a date within 90 days before the date of the
14 report;

15 (iii) presented in the report the signing
16 officers' conclusions about the effectiveness of the internal
17 controls based on that evaluation;

18 (iv) disclosed to the corporation's
19 auditors all significant deficiencies in the design or operation of
20 internal controls that could adversely affect the corporation's
21 ability to record, process, summarize, and report financial data;

22 (v) identified for the corporation's
23 auditors:

24 (A) any material weakness in internal
25 controls; and

26 (B) any fraud, regardless of whether
27 material, that involves management or other employees who have a

1 significant role in the corporation's internal controls; and

2 (vi) indicated in the report whether there
3 were significant changes in internal controls or in other factors
4 that could significantly affect internal controls after the date of
5 the evaluation, including any corrective actions with regard to
6 significant deficiencies and material weaknesses.

7 (2) The State Securities Board may adopt rules to
8 administer this section.

9 (3) This section does not apply to a corporation
10 without capital stock that is not organized and engaged in business
11 for profit.

12 C. (1) An officer or director of a corporation, or another
13 person acting under the direction of an officer or director,
14 commits an offense if the director, officer, or other person takes
15 any action to fraudulently influence, coerce, manipulate, or
16 mislead an independent accountant in the performance of an audit of
17 a financial report of the corporation for the purpose of making the
18 financial report materially misleading.

19 (2) An offense under this section is a state jail
20 felony.

21 D. (1) A corporation subject to this Article or an officer,
22 employee, contractor, subcontractor, or agent of the corporation
23 commits an offense if the corporation or person discharges,
24 demotes, suspends, threatens, harasses, or in any manner
25 discriminates against an employee in the employee's terms and
26 conditions of employment because of any lawful act by the employee
27 to:

1 (a) provide information or otherwise assist in an
2 investigation regarding conduct that the employee reasonably
3 believes is a violation of this Article; or

4 (b) file, cause to be filed, testify at,
5 participate in, or otherwise assist in a proceeding relating to an
6 alleged violation of this Article.

7 (2) An offense under this section is a state jail
8 felony.

9 E. The Attorney General may conduct an investigation of a
10 violation or threatened violation of this Article and may report
11 the results of the investigation to an appropriate district or
12 county attorney. On the request of a district or county attorney
13 the Attorney General may assist in prosecution of an offense under
14 this Article.

15 SECTION 2. This Act takes effect September 1, 2003.