

By: Ellis, et al.

S.B. No. 1059

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 auditing standards.

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

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

27 (4) "Independent certified public accountant" means a

1 certified public accountant who:

2 (A) is not affiliated with, is not an employee,
3 principal, or direct or indirect owner of, and is not in any way
4 controlled by the audited company; and

5 (B) meets independence standards adopted by
6 appropriate standard-setting or regulatory entities.

7 (5) "State governmental entity" means:

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

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

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

17 (b) A company that enters into a contract with a state
18 governmental entity that involves the expenditure of more than
19 \$25,000 shall:

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

23 (2) annually during the contract period submit to the
24 entity a certified audit of the company's operations, except as
25 provided by Subsection (g).

26 (c) The auditor's opinion in an audit required by Subsection
27 (b)(2) must state whether the financial statements of the audited

1 company present fairly, in all material respects and in accordance
2 with accounting principles generally accepted in the United States,
3 its financial position and results of operations relating to the
4 obligation, receipt, expenditure, and use of state funds.

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

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

11 (f) If the attorney general prevails in an action for
12 recovery of a civil penalty under Subsection (e), the attorney
13 general is entitled to recover reasonable attorney's fees incurred
14 in obtaining the penalty.

15 (g) A federally insured financial institution that has less
16 than \$500 million in assets may, in lieu of a certified audit
17 required by Subsection (b)(2), submit a directors examination
18 conducted by an independent certified public accountant in
19 accordance with the Statement of Standards for Attestation
20 Engagements.

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

23 CHAPTER 2263. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE
24 FINANCIAL ADVISORS AND SERVICE PROVIDERS

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

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

3 (2) by or for:

4 (A) a public retirement system as defined by
5 Section 802.001 that provides service retirement, disability
6 retirement, or death benefits for officers or employees of the
7 state;

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

10 (C) another entity that is part of state
11 government and that manages or invests state funds or for which
12 state funds are managed or invested.

13 (b) This chapter applies in connection with the management
14 or investment of state funds without regard to whether the funds are
15 held in the state treasury.

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

20 Sec. 2263.002. DEFINITION. In this chapter, "financial
21 advisor or service provider" includes a person or business entity
22 who acts as a financial advisor, financial consultant, money or
23 investment manager, or broker.

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

27 Sec. 2263.004. ETHICS REQUIREMENTS FOR OUTSIDE FINANCIAL

1 ADVISORS OR SERVICE PROVIDERS. (a) The governing body of a state
2 governmental entity by rule shall adopt standards of conduct
3 applicable to financial advisors or service providers who are not
4 employees of the state governmental entity, who provide financial
5 services to the state governmental entity or advise the state
6 governmental entity or a member of the governing body of the state
7 governmental entity in connection with the management or investment
8 of state funds, and who:

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

12 (2) render important investment or funds management
13 advice to the entity or a member of the governing body of the
14 entity, as determined by the governing body.

15 (b) A contract under which a financial advisor or service
16 provider renders financial services or advice to a state
17 governmental entity or other person as described by Subsection (a)
18 is voidable by the state governmental entity if the financial
19 advisor or service provider violates a standard of conduct adopted
20 under this section.

21 Sec. 2263.005. DISCLOSURE REQUIREMENTS FOR OUTSIDE
22 FINANCIAL ADVISOR OR SERVICE PROVIDER. (a) A financial advisor or
23 service provider described by Section 2263.004 shall disclose in
24 writing to the administrative head of the applicable state
25 governmental entity and to the state auditor:

26 (1) any relationship the financial advisor or service
27 provider has with any party to a transaction with the state

1 governmental entity, other than a relationship necessary to the
2 investment or funds management services that the financial advisor
3 or service provider performs for the state governmental entity, if
4 a reasonable person could expect the relationship to diminish the
5 financial advisor's or service provider's independence of judgment
6 in the performance of the person's responsibilities to the state
7 governmental entity; and

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

15 (b) The financial advisor or service provider shall
16 disclose a relationship described by Subsection (a) without regard
17 to whether the relationship is a direct, indirect, personal,
18 private, commercial, or business relationship.

19 (c) A financial advisor or service provider described by
20 Section 2263.004 shall file annually a statement with the
21 administrative head of the applicable state governmental entity and
22 with the state auditor. The statement must disclose each
23 relationship and pecuniary interest described by Subsection (a) or,
24 if no relationship or pecuniary interest described by that
25 subsection existed during the disclosure period, the statement must
26 affirmatively state that fact.

27 (d) The annual statement must be filed not later than

1 February 1 on a form prescribed by the governmental entity, other
2 than the state auditor, receiving the form. The statement must
3 cover the reporting period of the previous calendar year. The state
4 auditor shall develop and recommend a uniform form that other
5 governmental entities receiving the form may prescribe.

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

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

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

18 B. Except to the extent that any provisions of this Act are
19 expressly made inapplicable by any provision of the Texas Business
20 Corporation Act, the Texas Non-Profit Corporation Act, or any
21 special Statute of this State pertaining to a particular type of
22 corporation and except as otherwise provided by Article 5.20 of
23 this Act, this Act shall govern (1) all domestic corporations,
24 including without limitation those corporations heretofore or
25 hereafter organized under any Statute of the State, and (2) only to
26 the extent expressly provided in this Act, all foreign
27 corporations, including without limitation those corporations

1 heretofore or hereafter granted a permit to do business under any
2 Statute of the State.

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

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

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

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

19 (b) A corporate official who signs a sworn statement
20 certifying that information contained in a financial report fairly
21 represents, as of the period presented in the report, the financial
22 condition or results of operation of the company issuing the report
23 commits an offense if the corporate official makes the
24 certification knowing that the report contains false or misleading
25 information that affects or may affect the finances or operations
26 of the issuing company, as appropriate, in any material respect.

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

1 SECTION 6. The office of the attorney general is not
2 required to implement Section 402.0231, Government Code, as added
3 by this Act, unless a specific appropriation for the implementation
4 is provided in the General Appropriations Act, Acts of the 78th
5 Legislature, Regular Session, 2003.

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

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