

By: Ellis, et al.

S.B. No. 1060

A BILL TO BE ENTITLED

AN ACT

1
2 relating to enforcement of conduct and other matters concerning a
3 security; providing a penalty.

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

5 SECTION 1. Subsection A, Section 4, The Securities Act
6 (Article 581-4, Vernon's Texas Civil Statutes), is amended to read
7 as follows:

8 A. The term "security" or "securities" shall include any
9 limited partner interest in a limited partnership, share, stock,
10 treasury stock, stock certificate under a voting trust agreement,
11 collateral trust certificate, equipment trust certificate,
12 preorganization certificate or receipt, subscription or
13 reorganization certificate, note, bond, debenture, mortgage
14 certificate or other evidence of indebtedness, any form of
15 commercial paper, certificate in or under a profit sharing or
16 participation agreement, certificate or any instrument
17 representing any interest in or under an oil, gas or mining lease,
18 fee or title, or any certificate or instrument representing or
19 secured by an interest in any or all of the capital, property,
20 assets, profits or earnings of any company, investment contract, or
21 any other instrument commonly known as a security, whether similar
22 to those herein referred to or not. The term applies regardless of
23 whether the "security" or "securities" are evidenced by a written
24 instrument. Provided, however, that this definition shall not

1 apply to any insurance policy, endowment policy, annuity contract,
2 optional annuity contract, or any contract or agreement in relation
3 to and in consequence of any such policy or contract, issued by an
4 insurance company subject to the supervision or control of the
5 Texas Department of Insurance when the form of such policy or
6 contract has been duly filed with the Department as now or hereafter
7 required by law.

8 SECTION 2. Section 28, The Securities Act (Article 581-28,
9 Vernon's Texas Civil Statutes), is amended by adding Subsection C
10 to read as follows:

11 C. Assistance to Securities Regulator of Another
12 Jurisdiction. The Commissioner may provide assistance to a
13 securities regulator of another state or a foreign jurisdiction who
14 requests assistance in conducting an investigation to determine
15 whether a person has violated, is violating, or is about to violate
16 a law or rule of the other state or foreign jurisdiction relating to
17 a securities matter the securities regulator is authorized to
18 administer or enforce. The Commissioner may provide assistance by
19 using the authority to investigate and any other power conferred by
20 this section as the Commissioner determines is necessary and
21 appropriate. The assistance may be provided without regard to
22 whether the conduct described in the request would also constitute
23 a violation of this Act or another law of this state had the conduct
24 occurred in this state. In determining whether to provide the
25 assistance, the Commissioner may consider:

26 (1) whether the securities regulator is permitted and
27 has agreed to provide assistance within the regulator's

1 jurisdiction to the Commissioner reciprocally and at the
2 Commissioner's request concerning securities matters;

3 (2) whether compliance with the request for assistance
4 would violate or otherwise prejudice the public policy of this
5 state; and

6 (3) the availability of Board employees and resources
7 of the Board or Commissioner necessary to carry out the request for
8 assistance.

9 SECTION 3. Section 29, The Securities Act (Article 581-29,
10 Vernon's Texas Civil Statutes), is amended to read as follows:

11 Sec. 29. PENAL PROVISIONS. Any person who shall:

12 A. Sell, offer for sale or delivery, solicit subscriptions
13 or orders for, dispose of, invite offers for, or who shall deal in
14 any other manner in any security or securities without being a
15 registered dealer or agent as in this Act provided shall be deemed
16 guilty of a felony, and upon conviction thereof shall be sentenced
17 to pay a fine of not more than \$5,000 or imprisonment in the
18 penitentiary for not less than two or more than 10 years, or by both
19 such fine and imprisonment.

20 B. Sell, offer for sale or delivery, solicit subscriptions
21 to and orders for, dispose of, invite orders for, or who shall deal
22 in any other manner in any security or securities issued after
23 September 6, 1955, unless said security or securities have been
24 registered or granted a permit as provided in Section 7 of this Act,
25 shall be deemed guilty of a felony, and upon conviction thereof
26 shall be sentenced to pay a fine of not more than \$5,000 or
27 imprisonment in the penitentiary for not less than two or more than

1 10 years, or by both such fine and imprisonment.

2 C. In connection with the sale, offering for sale or
3 delivery of, the purchase, offer to purchase, invitation of offers
4 to purchase, invitations of offers to sell, or dealing in any other
5 manner in any security or securities, whether or not the
6 transaction or security is exempt under Section 5 or 6 of this Act,
7 directly or indirectly:

8 (1) engage in any fraud or fraudulent practice;

9 (2) employ any device, scheme, or artifice to
10 defraud;

11 (3) knowingly make any untrue statement of a
12 material fact or omit to state a material fact necessary in order to
13 make the statements made, in the light of the circumstances under
14 which they are made, not misleading; or

15 (4) engage in any act, practice or course of
16 business which operates or will operate as a fraud or deceit upon
17 any person, is guilty of a felony and upon conviction shall be:

18 (a) imprisoned for not less than 2 or more
19 than 10 years and fined not more than \$10,000, if the amount
20 involved in the offense is less than \$10,000;

21 (b) imprisoned for not less than 2 or more
22 than 20 years and fined not more than \$10,000, if the amount
23 involved in the offense is \$10,000 or more but less than \$100,000;

24 or

25 (c) imprisoned for life or for not less than
26 5 or more than 99 years and fined not more than \$10,000, if the
27 amount involved is \$100,000 or more.

1 D. Knowingly violate a cease and desist order issued by the
2 commissioner under the authority of Section 23A, 23B, or 23-2 of
3 this Act shall be deemed guilty of a felony, and upon conviction
4 thereof shall be sentenced to pay a fine of not more than \$5,000 or
5 imprisonment in the penitentiary for not more than two years, or by
6 both such fine and imprisonment.

7 E. Knowingly make or cause to be made, in any document filed
8 with the commissioner or in any proceeding under this Act, whether
9 or not such document or proceeding relates to a transaction or
10 security exempt under the provisions of Sections 5 or 6 of this Act,
11 any statement which is, at the time and in the light of the
12 circumstances under which it is made, false or misleading in any
13 material respect shall be deemed guilty of a felony, and upon
14 conviction thereof shall be sentenced to pay a fine of not more than
15 \$5,000 or imprisonment in the penitentiary for not less than two or
16 more than 10 years, or by both such fine and imprisonment.

17 F. Knowingly make any false statement or representation
18 concerning any registration made under the provisions of this Act
19 shall be deemed guilty of a felony, and upon conviction thereof
20 shall be sentenced to pay a fine of not more than \$5,000 or
21 imprisonment in the penitentiary for not more than two years, or by
22 both such fine and imprisonment.

23 G. Make an offer of any security within this State that is
24 not in compliance with the requirements governing offers set forth
25 in Section 22 of this Act shall be deemed guilty of a felony, and
26 upon conviction thereof, shall be sentenced to pay a fine of not
27 more than \$5,000 or imprisonment in the penitentiary for not more

1 than two years, or by both such fine and imprisonment.

2 H. Knowingly make an offer of any security within this State
3 prohibited by a cease publication order issued by the Commissioner
4 under Section 23C of this Act shall be deemed guilty of a felony,
5 and upon conviction thereof, shall be sentenced to pay a fine of not
6 more than \$5,000 or imprisonment in the penitentiary for not more
7 than two years, or by both such fine and imprisonment.

8 I. Render services, directly or through an investment
9 adviser representative, as an investment adviser without being a
10 registered investment adviser as required by this Act or without
11 submitting a notice filing as required by Section 12-1 of this Act
12 shall be considered guilty of a felony and on conviction of the
13 felony shall be sentenced to pay a fine of not more than \$5,000 or
14 imprisonment in the penitentiary for not less than two or more than
15 10 years, or by both the fine and imprisonment.

16 SECTION 4. Section 32, The Securities Act (Article 581-32,
17 Vernon's Texas Civil Statutes), is amended by amending Subsection B
18 and adding Subsection C to read as follows:

19 B. The Attorney General may, in an action under Subsection A
20 of this section or in a separate action in District Court, seek
21 equitable relief, including restitution, for a victim of fraudulent
22 practices. The court may grant any equitable relief that the court
23 considers appropriate and may order the defendant to deliver to the
24 person defrauded the amount of money or the property that the
25 defendant obtained from the person by the fraudulent practices.

26 C. In an action brought under this section for fraud or a
27 fraudulent practice in connection with the sale of a security, the

1 Attorney General may seek the disgorgement of any economic benefit
2 gained by the defendant through the violation, including a bonus,
3 fee, commission, option, proceeds, profit from or loss avoided
4 through the sale of the security, or any other tangible benefit.
5 The Attorney General may recover from an order of disgorgement
6 obtained under this subsection reasonable costs and expenses
7 incurred by the Attorney General in bringing the action.

8 SECTION 5. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2003.