

1-1 By: Ellis, Carona, Hinojosa S.B. No. 1060
1-2 (In the Senate - Filed March 10, 2003; March 17, 2003, read
1-3 first time and referred to Committee on Government Organization;
1-4 March 31, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 31, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1060 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to enforcement of conduct and other matters concerning a
1-11 security; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection A, Section 4, The Securities Act
1-14 (Article 581-4, Vernon's Texas Civil Statutes), is amended to read
1-15 as follows:

1-16 A. The term "security" or "securities" shall include any
1-17 limited partner interest in a limited partnership, share, stock,
1-18 treasury stock, stock certificate under a voting trust agreement,
1-19 collateral trust certificate, equipment trust certificate,
1-20 preorganization certificate or receipt, subscription or
1-21 reorganization certificate, note, bond, debenture, mortgage
1-22 certificate or other evidence of indebtedness, any form of
1-23 commercial paper, certificate in or under a profit sharing or
1-24 participation agreement, certificate or any instrument
1-25 representing any interest in or under an oil, gas or mining lease,
1-26 fee or title, or any certificate or instrument representing or
1-27 secured by an interest in any or all of the capital, property,
1-28 assets, profits or earnings of any company, investment contract, or
1-29 any other instrument commonly known as a security, whether similar
1-30 to those herein referred to or not. The term applies regardless of
1-31 whether the "security" or "securities" are evidenced by a written
1-32 instrument. Provided, however, that this definition shall not
1-33 apply to any insurance policy, endowment policy, annuity contract,
1-34 optional annuity contract, or any contract or agreement in relation
1-35 to and in consequence of any such policy or contract, issued by an
1-36 insurance company subject to the supervision or control of the
1-37 Texas Department of Insurance when the form of such policy or
1-38 contract has been duly filed with the Department as now or hereafter
1-39 required by law.

1-40 SECTION 2. Section 28, The Securities Act (Article 581-28,
1-41 Vernon's Texas Civil Statutes), is amended by adding Subsection C
1-42 to read as follows:

1-43 C. Assistance to Securities Regulator of Another
1-44 Jurisdiction. The Commissioner may provide assistance to a
1-45 securities regulator of another state or a foreign jurisdiction who
1-46 requests assistance in conducting an investigation to determine
1-47 whether a person has violated, is violating, or is about to violate
1-48 a law or rule of the other state or foreign jurisdiction relating to
1-49 a securities matter the securities regulator is authorized to
1-50 administer or enforce. The Commissioner may provide assistance by
1-51 using the authority to investigate and any other power conferred by
1-52 this section as the Commissioner determines is necessary and
1-53 appropriate. The assistance may be provided without regard to
1-54 whether the conduct described in the request would also constitute
1-55 a violation of this Act or another law of this state had the conduct
1-56 occurred in this state. In determining whether to provide the
1-57 assistance, the Commissioner may consider:

1-58 (1) whether the securities regulator is permitted and
1-59 has agreed to provide assistance within the regulator's
1-60 jurisdiction to the Commissioner reciprocally and at the
1-61 Commissioner's request concerning securities matters;

1-62 (2) whether compliance with the request for assistance
1-63 would violate or otherwise prejudice the public policy of this

2-1 state; and
 2-2 (3) the availability of Board employees and resources
 2-3 of the Board or Commissioner necessary to carry out the request for
 2-4 assistance.

2-5 SECTION 3. Section 29, The Securities Act (Article 581-29,
 2-6 Vernon's Texas Civil Statutes), is amended to read as follows:

2-7 Sec. 29. PENAL PROVISIONS. Any person who shall:

2-8 A. Sell, offer for sale or delivery, solicit subscriptions
 2-9 or orders for, dispose of, invite offers for, or who shall deal in
 2-10 any other manner in any security or securities without being a
 2-11 registered dealer or agent as in this Act provided shall be deemed
 2-12 guilty of a felony, and upon conviction thereof shall be sentenced
 2-13 to pay a fine of not more than \$5,000 or imprisonment in the
 2-14 penitentiary for not less than two or more than 10 years, or by both
 2-15 such fine and imprisonment.

2-16 B. Sell, offer for sale or delivery, solicit subscriptions
 2-17 to and orders for, dispose of, invite orders for, or who shall deal
 2-18 in any other manner in any security or securities issued after
 2-19 September 6, 1955, unless said security or securities have been
 2-20 registered or granted a permit as provided in Section 7 of this Act,
 2-21 shall be deemed guilty of a felony, and upon conviction thereof
 2-22 shall be sentenced to pay a fine of not more than \$5,000 or
 2-23 imprisonment in the penitentiary for not less than two or more than
 2-24 10 years, or by both such fine and imprisonment.

2-25 C. In connection with the sale, offering for sale or
 2-26 delivery of, the purchase, offer to purchase, invitation of offers
 2-27 to purchase, invitations of offers to sell, or dealing in any other
 2-28 manner in any security or securities, whether or not the
 2-29 transaction or security is exempt under Section 5 or 6 of this Act,
 2-30 directly or indirectly:

2-31 (1) engage in any fraud or fraudulent practice;

2-32 (2) employ any device, scheme, or artifice to
 2-33 defraud;

2-34 (3) knowingly make any untrue statement of a
 2-35 material fact or omit to state a material fact necessary in order to
 2-36 make the statements made, in the light of the circumstances under
 2-37 which they are made, not misleading; or

2-38 (4) engage in any act, practice or course of
 2-39 business which operates or will operate as a fraud or deceit upon
 2-40 any person, is guilty of a felony and upon conviction shall be:

2-41 (a) imprisoned for not less than 2 or more
 2-42 than 10 years and fined not more than \$10,000, if the amount
 2-43 involved in the offense is less than \$10,000;

2-44 (b) imprisoned for not less than 2 or more
 2-45 than 20 years and fined not more than \$10,000, if the amount
 2-46 involved in the offense is \$10,000 or more but less than \$100,000;
 2-47 or

2-48 (c) imprisoned for life or for not less than
 2-49 5 or more than 99 years and fined not more than \$10,000, if the
 2-50 amount involved is \$100,000 or more.

2-51 D. Knowingly violate a cease and desist order issued by the
 2-52 commissioner under the authority of Section 23A, 23B, or 23-2 of
 2-53 this Act shall be deemed guilty of a felony, and upon conviction
 2-54 thereof shall be sentenced to pay a fine of not more than \$5,000 or
 2-55 imprisonment in the penitentiary for not more than two years, or by
 2-56 both such fine and imprisonment.

2-57 E. Knowingly make or cause to be made, in any document filed
 2-58 with the commissioner or in any proceeding under this Act, whether
 2-59 or not such document or proceeding relates to a transaction or
 2-60 security exempt under the provisions of Sections 5 or 6 of this Act,
 2-61 any statement which is, at the time and in the light of the
 2-62 circumstances under which it is made, false or misleading in any
 2-63 material respect shall be deemed guilty of a felony, and upon
 2-64 conviction thereof shall be sentenced to pay a fine of not more than
 2-65 \$5,000 or imprisonment in the penitentiary for not less than two or
 2-66 more than 10 years, or by both such fine and imprisonment.

2-67 F. Knowingly make any false statement or representation
 2-68 concerning any registration made under the provisions of this Act
 2-69 shall be deemed guilty of a felony, and upon conviction thereof

3-1 shall be sentenced to pay a fine of not more than \$5,000 or
3-2 imprisonment in the penitentiary for not more than two years, or by
3-3 both such fine and imprisonment.

3-4 G. Make an offer of any security within this State that is
3-5 not in compliance with the requirements governing offers set forth
3-6 in Section 22 of this Act shall be deemed guilty of a felony, and
3-7 upon conviction thereof, shall be sentenced to pay a fine of not
3-8 more than \$5,000 or imprisonment in the penitentiary for not more
3-9 than two years, or by both such fine and imprisonment.

3-10 H. Knowingly make an offer of any security within this State
3-11 prohibited by a cease publication order issued by the Commissioner
3-12 under Section 23C of this Act shall be deemed guilty of a felony,
3-13 and upon conviction thereof, shall be sentenced to pay a fine of not
3-14 more than \$5,000 or imprisonment in the penitentiary for not more
3-15 than two years, or by both such fine and imprisonment.

3-16 I. Render services, directly or through an investment
3-17 adviser representative, as an investment adviser without being a
3-18 registered investment adviser as required by this Act or without
3-19 submitting a notice filing as required by Section 12-1 of this Act
3-20 shall be considered guilty of a felony and on conviction of the
3-21 felony shall be sentenced to pay a fine of not more than \$5,000 or
3-22 imprisonment in the penitentiary for not less than two or more than
3-23 10 years, or by both the fine and imprisonment.

3-24 SECTION 4. Section 32, The Securities Act (Article 581-32,
3-25 Vernon's Texas Civil Statutes), is amended by amending Subsection B
3-26 and adding Subsection C to read as follows:

3-27 B. The Attorney General may, in an action under Subsection A
3-28 of this section or in a separate action in District Court, seek
3-29 equitable relief, including restitution, for a victim of fraudulent
3-30 practices. The court may grant any equitable relief that the court
3-31 considers appropriate and may order the defendant to deliver to the
3-32 person defrauded the amount of money or the property that the
3-33 defendant obtained from the person by the fraudulent practices.

3-34 C. In an action brought under this section for fraud or a
3-35 fraudulent practice in connection with the sale of a security, the
3-36 Attorney General may seek the disgorgement of any economic benefit
3-37 gained by the defendant through the violation, including a bonus,
3-38 fee, commission, option, proceeds, profit from or loss avoided
3-39 through the sale of the security, or any other tangible benefit.
3-40 The Attorney General may recover from an order of disgorgement
3-41 obtained under this subsection reasonable costs and expenses
3-42 incurred by the Attorney General in bringing the action.

3-43 SECTION 5. This Act takes effect immediately if it receives
3-44 a vote of two-thirds of all the members elected to each house, as
3-45 provided by Section 39, Article III, Texas Constitution. If this
3-46 Act does not receive the vote necessary for immediate effect, this
3-47 Act takes effect September 1, 2003.

3-48 * * * * *