

BILL ANALYSIS

C.S.H.B. 2842
By: Chisum
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 78th legislature passed H.B. 1218 to continue the functions of the Texas State Board of Public Accountancy. Section 29 of the bill requires the Texas State Board of Accountancy to report to the Governor, Lt. Governor and Speaker of the House, no later than December 31, 2004 regarding the requirements of the federal Sarbanes-Oxley Act (Pub. L. No. 107-204), including any restrictions on public interest entities, and any legislation or other action needed to conform state law to the requirements of that Act.

The board's report recommended new legislation to make it illegal for an officer or director of a public interest entity to fraudulently influence, coerce, manipulate, or mislead an independent public accountant or firm performing an audit in Texas.

Public interest entities are organizations whose audited financial statements are relied on by large numbers of stakeholders to make investment, credit, or similar decisions or by regulators in their oversight role and where any potential audit failures would harm the public.

The Sarbanes-Oxley Act was passed to help restore trust in public companies and safeguard national capital markets. The purpose of this bill is to align Texas law with Sarbanes-Oxley and to insure officers and directors of public interest entities who willfully mislead auditors of those entities are subject to penalties.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends Chapter 32, Penal Code to stipulate that an officer, director or persons designated by them commits an offense if the person takes an action to influence fraudulently the accounting firm engaged, fraudulently communicates information to the accounting firm if information was provided that was believed to be correct is found to be incorrect. Stipulates that an offense under this section is a felony, with the amount of the monetary loss defining the felony. Defines "financial institution," "insurer," and "public interest entity."

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2842 defines "financial institution," "insurer," and "issuer" which were not defined in the bill as filed. The definition of "public interest entity" in CSHB 2842 provides a list of the types of entities; the original bill provided a broad description without mentioning specific types of entities. CSHB 2842 replaces "outside auditor" which was in the bill as filed with "independent public accounting firm." CSHB 2842 adds an offense not in the original: that a person commits an offense if the person takes any action to fraudulently influence the accounting firm engaged in the performance of an audit. CSHB 2842 adds the modifier "fraudulently" to the other two offenses found in both versions of the bill. The substitute does not have the "immediate effect" clause found in the bill as filed.

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