

AN ACT

relating to certain investment products made available to certain public school employees and the companies authorized to provide those products; providing civil penalties.

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

SECTION 1. Section 4, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. In this section and in Sections 5, 6, 7, 8, 8A, 9, 9A, 9B, 10, 11, 12, and 13 of this Act:

(1) "Board of trustees" means the board of trustees of the Teacher Retirement System of Texas.

(2) "Educational institution" means a school district or an open-enrollment charter school.

(3) "Eligible qualified investment" means a qualified investment product offered by a company that:

(A) is certified to the board of trustees under Section 5 of this Act; or

(B) is eligible to certify to the board of trustees under Section 8 of this Act.

(4) "Employee" means an employee of an educational institution.

(5) "Qualified investment product" means an annuity or investment that:

1 (A) meets the requirements of Section 403(b),
2 Internal Revenue Code of 1986, and its subsequent amendments;

3 (B) complies with applicable federal insurance
4 and securities laws and regulations; and

5 (C) complies with applicable state insurance and
6 securities laws and rules.

7 (6) "Retirement system" means the Teacher Retirement
8 System of Texas.

9 (7) "Salary reduction agreement" means an agreement
10 between an educational institution and an employee to reduce the
11 employee's salary for the purpose of making direct contributions to
12 or purchases of a qualified investment product.

13 SECTION 2. Section 6, Chapter 22 (S.B. 17), Acts of the 57th
14 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
15 Texas Civil Statutes), is amended by amending Subsections (c), (d),
16 (e), and (f) and adding Subsections (d-1), (d-2), and (f-1) to read
17 as follows:

18 (c) After consultation with the Texas Department of
19 Insurance, the Texas Department of Banking, and the State
20 Securities Board, the retirement system may adopt rules only to
21 administer this section and Sections 5, 7, 8, 8A, 9A, 9B, 11, 12,
22 and 13 of this Act.

23 (d) The retirement system shall refer all complaints about
24 qualified investment products, including complaints that allege
25 violations of this Act by companies that certify to the retirement
26 system under Section 5 or 8 of this Act that the companies offer
27 qualified investment products, to the appropriate division of the

1 Texas Department of Insurance, the Texas Department of Banking, or
2 the State Securities Board.

3 (d-1) Except as provided by Subsection (d-2) of this
4 section, the Texas Department of Insurance, the Texas Department of
5 Banking, or the State Securities Board shall investigate a
6 complaint received from the retirement system under Subsection (d)
7 of this section. If as a result of the investigation the Texas
8 Department of Insurance, the Texas Department of Banking, or the
9 State Securities Board, as applicable, determines that a violation
10 of this Act may have occurred, the Texas Department of Insurance,
11 the Texas Department of Banking, or the State Securities Board, as
12 applicable, shall forward the results of the investigation relating
13 to an alleged violation of this Act to the attorney general.

14 (d-2) If the Texas Department of Banking receives a
15 complaint from the retirement system under Subsection (d) of this
16 section that relates to a federally chartered financial
17 institution, the Texas Department of Banking shall:

18 (1) refer the complaint to the appropriate federal
19 regulatory agency; and

20 (2) notify the attorney general of the department's
21 referral.

22 (e) The Texas Department of Insurance, the Texas Department
23 of Banking, and the State Securities Board shall cooperate with the
24 retirement system in the administration of this Act and shall:

25 (1) submit a report to [notify] the retirement system
26 at the beginning of each quarter of the fiscal year that provides
27 the status of any enforcement action taken or investigation or

1 referral made ~~[determination]~~ regarding a product or a company that
2 is the subject of a complaint under Subsection (d) of this section;
3 and

4 (2) promptly notify the retirement system of any final
5 enforcement order issued regarding the product or company ~~[violates~~
6 ~~Section 5 or 8A of this Act]~~.

7 (f) The retirement system may deny, suspend, ~~[shall reject]~~
8 or revoke the certification of a company if the retirement system
9 receives notice that ~~[under Subsection (e) of this section or~~
10 ~~Section 5(c) of this Act of a violation regarding]~~ the company or
11 the company's product was determined to be in violation of this Act
12 or another law in any judicial or administrative proceeding.

13 (f-1) A ~~[The]~~ company whose certification is denied,
14 suspended, or revoked under this section may recertify to the board
15 of trustees after any applicable period of suspension or
16 revocation.

17 SECTION 3. Section 8(a), Chapter 22 (S.B. 17), Acts of the
18 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
19 Vernon's Texas Civil Statutes), is amended to read as follows:

20 (a) A company that offers qualified investment products
21 other than annuity contracts, including a company that offers
22 custodial accounts under Section 403(b)(7), Internal Revenue Code
23 of 1986, that hold only investment products registered with the
24 system under Section 8A of this Act, may certify to the retirement
25 system based on rules adopted by the board of trustees. The rules
26 shall be based on reasonable factors, including:

27 (1) the financial strength of the companies offering

1 products; and

2 (2) the administrative cost to employees.

3 SECTION 4. Section 9(a), Chapter 22 (S.B. 17), Acts of the
4 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
5 Vernon's Texas Civil Statutes), is amended to read as follows:

6 (a) An educational institution may not:

7 (1) except as provided by Subdivision (8) of this
8 subsection and Subsection (b) of this section, refuse to enter into
9 a salary reduction agreement with an employee if the qualified
10 investment product that is the subject of the salary reduction is an
11 eligible qualified investment and is registered with the system
12 under Section 8A;

13 (2) require or coerce an employee's attendance at any
14 meeting at which qualified investment products are marketed;

15 (3) limit the ability of an employee to initiate,
16 change, or terminate a qualified investment product at any time the
17 employee chooses;

18 (4) grant exclusive access to an employee by
19 discriminating against or imposing barriers to any agent, broker,
20 or company that provides qualified investment products under this
21 Act;

22 (5) grant exclusive access to information about an
23 employee's financial information, including information about an
24 employee's qualified investment products, to a company or agent or
25 affiliate of a company offering qualified investment products
26 unless the employee consents in writing to the access;

27 (6) accept any benefit from a company or from an agent

1 or affiliate of a company that offers qualified investment
2 products; ~~[or]~~

3 (7) use public funds to recommend a qualified
4 investment product offered by a company or an agent or affiliate of
5 a company that offers a qualified investment product; or

6 (8) enter into or continue a salary reduction
7 agreement with an employee if the qualified investment product that
8 is the subject of the salary reduction agreement is not an eligible
9 qualified investment, including the investment product of a company
10 whose certification has been denied, suspended, or revoked without
11 first providing the employee with notice in writing that:

12 (A) indicates the reason the subject of the
13 salary reduction agreement is no longer an eligible qualified
14 investment or why certification has been denied, suspended, or
15 revoked; and

16 (B) clearly states that by signing the notice the
17 employee is agreeing to enter into or continue the salary reduction
18 agreement.

19 SECTION 5. Chapter 22 (S.B. 17), Acts of the 57th
20 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
21 Texas Civil Statutes), is amended by adding Sections 9A and 9B to
22 read as follows:

23 Sec. 9A. A person, other than an employee of an educational
24 institution, or an affiliate of the person may not enter into or
25 renew a contract under which the person is to provide services for
26 or administer a plan offered by the institution under Section
27 403(b), Internal Revenue Code of 1986, unless the person:

1 (1) holds a license or certificate of authority issued
2 by the Texas Department of Insurance;

3 (2) is registered as a securities dealer or agent or
4 investment advisor with the State Securities Board; or

5 (3) is a financial institution that:

6 (A) is authorized by state or federal law to
7 exercise fiduciary powers; and

8 (B) has its main office, a branch office, or a
9 trust office in this state.

10 Sec. 9B. (a) This section applies to an entity under this
11 Act that enters into a contract with an educational institution to
12 administer a plan offered by the institution under Section 403(b),
13 Internal Revenue Code of 1986.

14 (b) If a person described by Subsection (a) holds a meeting
15 at which qualified investment products will be marketed to
16 employees of the educational institution, the person must provide
17 representatives of other companies certified to the retirement
18 system under Section 5 or 8 of this Act an opportunity to attend and
19 market their qualified investment products at the meeting.

20 SECTION 6. Section 10(a), Chapter 22 (S.B. 17), Acts of the
21 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
22 Vernon's Texas Civil Statutes), is amended to read as follows:

23 (a) A person commits an offense if the person:

24 (1) sells or offers for sale an [~~a qualified~~]
25 investment product that is not an eligible qualified investment or
26 that is not registered under Section 8A of this Act and that the
27 person knows will be the subject of a salary reduction agreement;

1 (2) violates the licensing requirements of Title 13,
2 Insurance Code, with regard to a qualified investment product that
3 the person knows will be the subject of a salary reduction
4 agreement; or

5 (3) engages in activity described by Subchapter B,
6 Chapter 541, Insurance Code, with regard to a qualified investment
7 product that the person knows will be the subject of a salary
8 reduction agreement.

9 SECTION 7. Chapter 22 (S.B. 17), Acts of the 57th
10 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
11 Texas Civil Statutes), is amended by adding Section 10A to read as
12 follows:

13 Sec. 10A. (a) A person who violates this Act is subject to a
14 civil penalty in an amount that does not exceed:

15 (1) \$10,000 for a single violation; or

16 (2) \$1,000,000 for multiple violations.

17 (b) For purposes of determining the amount of a civil
18 penalty under this section, the court shall consider the following
19 factors:

20 (1) the seriousness, nature, circumstances, extent,
21 and persistence of the conduct constituting the violation;

22 (2) the harm to other persons resulting directly or
23 indirectly from the violation;

24 (3) cooperation by the person in any inquiry conducted
25 by the state concerning the violation, efforts to prevent future
26 occurrences of the violation, and efforts to mitigate the harm
27 caused by the violation;

1 (4) the history of previous violations by the person;

2 (5) the need to deter the person or others from
3 committing such violations in the future; and

4 (6) other matters as justice may require.

5 (c) The attorney general may institute an action:

6 (1) for injunctive relief to restrain a violation by a
7 person who is or who appears to be in violation of or threatening to
8 violate this Act; or

9 (2) to collect a civil penalty under this section.

10 (d) An action under this section must be filed in a district
11 court in Travis County.

12 (e) The attorney general may recover reasonable expenses
13 incurred in obtaining injunctive relief under this section,
14 including court costs, reasonable attorney's fees, investigative
15 costs, witness fees, and deposition expenses.

16 SECTION 8. (a) Section 9(a), Chapter 22 (S.B. 17), Acts of
17 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
18 Vernon's Texas Civil Statutes), as amended by this Act, applies to a
19 salary reduction agreement that is entered into or renewed on or
20 after the effective date of this Act. A salary reduction agreement
21 that is entered into or renewed before the effective date of this
22 Act is governed by the law in effect on the date the agreement was
23 entered into or renewed, and the former law remains in effect for
24 that purpose.

25 (b) Sections 9A and 9B, Chapter 22 (S.B. 17), Acts of the
26 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
27 Vernon's Texas Civil Statutes), as added by this Act, apply to a

1 contract to administer a plan under Section 403(b), Internal
2 Revenue Code of 1986, offered by a school district or
3 open-enrollment charter school that is entered into or renewed on
4 or after the effective date of this Act. A contract entered into or
5 renewed before the effective date of this Act is governed by the law
6 in effect on the date the contract was entered into or renewed, and
7 the former law remains in effect for that purpose.

8 (c) Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th
9 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
10 Texas Civil Statutes), as amended by this Act, and Section 10A,
11 Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called
12 Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as
13 added by this Act, apply only to a violation that occurs on or after
14 the effective date of this Act. A violation that occurred before
15 the effective date of this Act is covered by the law in effect at the
16 time the violation occurred, and the former law is continued in
17 effect for that purpose.

18 SECTION 9. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 3480 was passed by the House on May 14, 2009, by the following vote: Yeas 134, Nays 8, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3480 on May 29, 2009, by the following vote: Yeas 136, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3480 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor