

By: Truitt

H.B. No. 3480

Substitute the following for H.B. No. 3480:

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C.S.H.B. No. 3480

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

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

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

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

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

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

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

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

23 (5) "Qualified investment product" means an annuity or
24 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) and (f-1) to read as
17 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) The Texas Department of Insurance, the Texas
4 Department of Banking, or the State Securities Board shall
5 investigate a complaint received from the retirement system under
6 Subsection (d) of this section. If as a result of the investigation
7 the Texas Department of Insurance, the Texas Department of Banking,
8 or the State Securities Board, as applicable, determines that a
9 violation may have occurred, the Texas Department of Insurance, the
10 Texas Department of Banking, or the State Securities Board, as
11 applicable, shall forward the results of the investigation to the
12 attorney general.

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

16 (1) submit a report to [notify] the retirement system
17 at the beginning of each quarter of the fiscal year that provides
18 the status of any enforcement action taken or investigation made
19 [determination] regarding a product or a company that is the
20 subject of a complaint under Subsection (d) of this section; and

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

24 (f) The retirement system may deny, suspend, [shall reject]
25 or revoke the certification of a company if the retirement system
26 receives notice that [under Subsection (e) of this section or
27 Section 5(c) of this Act of a violation regarding] the company or

1 the company's product was determined to be in violation of this Act
2 or another law in any judicial or administrative proceeding.

3 (f-1) A [The] company whose certification is denied,
4 suspended, or revoked under this section may recertify to the board
5 of trustees after any applicable period of suspension or
6 revocation.

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

10 (a) A company that offers qualified investment products
11 other than annuity contracts, including a company that offers
12 custodial accounts under Section 403(b)(7), Internal Revenue Code
13 of 1986, that hold only investment products registered with the
14 system under Section 8A of this Act, may certify to the retirement
15 system based on rules adopted by the board of trustees. The rules
16 shall be based on reasonable factors, including:

17 (1) the financial strength of the companies offering
18 products; and

19 (2) the administrative cost to employees.

20 SECTION 4. Section 9(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) An educational institution may not:

24 (1) except as provided by Subdivision (8) of this
25 subsection and Subsection (b) of this section, refuse to enter into
26 a salary reduction agreement with an employee if the qualified
27 investment product that is the subject of the salary reduction is an

1 eligible qualified investment and is registered with the system
2 under Section 8A;

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

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

8 (4) grant exclusive access to an employee by
9 discriminating against or imposing barriers to any agent, broker,
10 or company that provides qualified investment products under this
11 Act;

12 (5) grant exclusive access to information about an
13 employee's financial information, including information about an
14 employee's qualified investment products, to a company or agent or
15 affiliate of a company offering qualified investment products
16 unless the employee consents in writing to the access;

17 (6) accept any benefit from a company or from an agent
18 or affiliate of a company that offers qualified investment
19 products; ~~or~~

20 (7) use public funds to recommend a qualified
21 investment product offered by a company or an agent or affiliate of
22 a company that offers a qualified investment product; or

23 (8) enter into or continue a salary reduction
24 agreement with an employee if the qualified investment product that
25 is the subject of the salary reduction agreement is not an eligible
26 qualified investment, including the investment product of a company
27 whose certification has been denied, suspended, or revoked.

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

5 Sec. 9A. A person may not enter into or renew a contract
6 with an educational institution to provide services for or
7 administer a plan offered by the institution under Section 403(b),
8 Internal Revenue Code of 1986, if the person is:

9 (1) a company that certifies to the retirement system
10 under Section 5 or 8 of this Act;

11 (2) a company owned by or otherwise affiliated by
12 common ownership or control with a company described by Subdivision
13 (1) of this section; or

14 (3) an agent of a company described by Subdivision (1)
15 or (2) of this section.

16 Sec. 9B. A person, other than an employee of an educational
17 institution, or an affiliate of the person may not enter into or
18 renew a contract under which the person is to provide services for
19 or administer a plan offered by the institution under Section
20 403(b), Internal Revenue Code of 1986, unless the person:

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

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

25 (3) is a financial institution that:

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

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

3 SECTION 6. Section 10(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) A person commits an offense if the person:

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

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

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

19 SECTION 7. 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 Section 10A to read as
22 follows:

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

25 (1) \$10,000 for a single violation; or

26 (2) \$1,000,000 for multiple violations.

27 (b) For purposes of determining the amount of a civil

1 penalty under this section, the court shall consider the following
2 factors:

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

5 (2) the harm to other persons resulting directly or
6 indirectly from the violation;

7 (3) cooperation by the person in any inquiry conducted
8 by the state concerning the violation, efforts to prevent future
9 occurrences of the violation, and efforts to mitigate the harm
10 caused by the violation;

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

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

14 (6) other matters as justice may require.

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

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

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

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

22 (e) The attorney general may recover reasonable expenses
23 incurred in obtaining injunctive relief under this section,
24 including court costs, reasonable attorney's fees, investigative
25 costs, witness fees, and deposition expenses.

26 SECTION 8. (a) Section 9(a), Chapter 22 (S.B. 17), Acts of
27 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,

1 Vernon's Texas Civil Statutes), as amended by this Act, applies to a
2 salary reduction agreement that is entered into or renewed on or
3 after the effective date of this Act. A salary reduction agreement
4 that is entered into or renewed before the effective date of this
5 Act is governed by the law in effect on the date the agreement was
6 entered into or renewed, and the former law remains in effect for
7 that purpose.

8 (b) Sections 9A and 9B, Chapter 22 (S.B. 17), Acts of the
9 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
10 Vernon's Texas Civil Statutes), as added by this Act, apply to a
11 contract to administer a plan under Section 403(b), Internal
12 Revenue Code of 1986, offered by a school district or
13 open-enrollment charter school that is entered into or renewed on
14 or after the effective date of this Act. A contract entered into or
15 renewed before the effective date of this Act is governed by the law
16 in effect on the date the contract was entered into or renewed, and
17 the former law remains in effect for that purpose.

18 (c) Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th
19 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
20 Texas Civil Statutes), as amended by this Act, and Section 10A,
21 Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called
22 Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as
23 added by this Act, apply only to a violation that occurs on or after
24 the effective date of this Act. A violation that occurred before
25 the effective date of this Act is covered by the law in effect at the
26 time the violation occurred, and the former law is continued in
27 effect for that purpose.

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