

1-1 By: Truitt, Menendez H.B. No. 3480
1-2 (Senate Sponsor - Van de Putte)
1-3 (In the Senate - Received from the House May 15, 2009;
1-4 May 18, 2009, read first time and referred to Committee on State
1-5 Affairs; May 25, 2009, reported favorably by the following vote:
1-6 Yeas 5, Nays 0; May 25, 2009, sent to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to certain investment products made available to certain
1-10 public school employees and the companies authorized to provide
1-11 those products; providing civil penalties.

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

1-13 SECTION 1. Section 4, Chapter 22 (S.B. 17), Acts of the 57th
1-14 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
1-15 Texas Civil Statutes), is amended to read as follows:

1-16 Sec. 4. In this section and in Sections 5, 6, 7, 8, 8A, 9,
1-17 9A, 9B, 10, 11, 12, and 13 of this Act:

1-18 (1) "Board of trustees" means the board of trustees of
1-19 the Teacher Retirement System of Texas.

1-20 (2) "Educational institution" means a school district
1-21 or an open-enrollment charter school.

1-22 (3) "Eligible qualified investment" means a qualified
1-23 investment product offered by a company that:

1-24 (A) is certified to the board of trustees under
1-25 Section 5 of this Act; or

1-26 (B) is eligible to certify to the board of
1-27 trustees under Section 8 of this Act.

1-28 (4) "Employee" means an employee of an educational
1-29 institution.

1-30 (5) "Qualified investment product" means an annuity or
1-31 investment that:

1-32 (A) meets the requirements of Section 403(b),
1-33 Internal Revenue Code of 1986, and its subsequent amendments;

1-34 (B) complies with applicable federal insurance
1-35 and securities laws and regulations; and

1-36 (C) complies with applicable state insurance and
1-37 securities laws and rules.

1-38 (6) "Retirement system" means the Teacher Retirement
1-39 System of Texas.

1-40 (7) "Salary reduction agreement" means an agreement
1-41 between an educational institution and an employee to reduce the
1-42 employee's salary for the purpose of making direct contributions to
1-43 or purchases of a qualified investment product.

1-44 SECTION 2. Section 6, Chapter 22 (S.B. 17), Acts of the 57th
1-45 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
1-46 Texas Civil Statutes), is amended by amending Subsections (c), (d),
1-47 (e), and (f) and adding Subsections (d-1), (d-2), and (f-1) to read
1-48 as follows:

1-49 (c) After consultation with the Texas Department of
1-50 Insurance, the Texas Department of Banking, and the State
1-51 Securities Board, the retirement system may adopt rules only to
1-52 administer this section and Sections 5, 7, 8, 8A, 9A, 9B, 11, 12,
1-53 and 13 of this Act.

1-54 (d) The retirement system shall refer all complaints about
1-55 qualified investment products, including complaints that allege
1-56 violations of this Act by companies that certify to the retirement
1-57 system under Section 5 or 8 of this Act that the companies offer
1-58 qualified investment products, to the appropriate division of the
1-59 Texas Department of Insurance, the Texas Department of Banking, or
1-60 the State Securities Board.

1-61 (d-1) Except as provided by Subsection (d-2) of this
1-62 section, the Texas Department of Insurance, the Texas Department of
1-63 Banking, or the State Securities Board shall investigate a
1-64 complaint received from the retirement system under Subsection (d)

2-1 of this section. If as a result of the investigation the Texas
 2-2 Department of Insurance, the Texas Department of Banking, or the
 2-3 State Securities Board, as applicable, determines that a violation
 2-4 of this Act may have occurred, the Texas Department of Insurance,
 2-5 the Texas Department of Banking, or the State Securities Board, as
 2-6 applicable, shall forward the results of the investigation relating
 2-7 to an alleged violation of this Act to the attorney general.

2-8 (d-2) If the Texas Department of Banking receives a
 2-9 complaint from the retirement system under Subsection (d) of this
 2-10 section that relates to a federally chartered financial
 2-11 institution, the Texas Department of Banking shall:

2-12 (1) refer the complaint to the appropriate federal
 2-13 regulatory agency; and

2-14 (2) notify the attorney general of the department's
 2-15 referral.

2-16 (e) The Texas Department of Insurance, the Texas Department
 2-17 of Banking, and the State Securities Board shall cooperate with the
 2-18 retirement system in the administration of this Act and shall:

2-19 (1) submit a report to ~~notify~~ the retirement system
 2-20 at the beginning of each quarter of the fiscal year that provides
 2-21 the status of any enforcement action taken or investigation or
 2-22 referral made ~~determination~~ regarding a product or a company that
 2-23 is the subject of a complaint under Subsection (d) of this section;
 2-24 and

2-25 (2) promptly notify the retirement system of any final
 2-26 enforcement order issued regarding the product or company ~~violates~~
 2-27 ~~Section 5 or 8A of this Act~~.

2-28 (f) The retirement system may deny, suspend, ~~shall reject~~
 2-29 or revoke the certification of a company if the retirement system
 2-30 receives notice that ~~under Subsection (e) of this section or~~
 2-31 ~~Section 5(c) of this Act of a violation regarding~~ the company or
 2-32 the company's product was determined to be in violation of this Act
 2-33 or another law in any judicial or administrative proceeding.

2-34 (f-1) A ~~The~~ company whose certification is denied,
 2-35 suspended, or revoked under this section may recertify to the board
 2-36 of trustees after any applicable period of suspension or
 2-37 revocation.

2-38 SECTION 3. Section 8(a), Chapter 22 (S.B. 17), Acts of the
 2-39 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
 2-40 Vernon's Texas Civil Statutes), is amended to read as follows:

2-41 (a) A company that offers qualified investment products
 2-42 other than annuity contracts, including a company that offers
 2-43 custodial accounts under Section 403(b)(7), Internal Revenue Code
 2-44 of 1986, that hold only investment products registered with the
 2-45 system under Section 8A of this Act, may certify to the retirement
 2-46 system based on rules adopted by the board of trustees. The rules
 2-47 shall be based on reasonable factors, including:

2-48 (1) the financial strength of the companies offering
 2-49 products; and

2-50 (2) the administrative cost to employees.

2-51 SECTION 4. Section 9(a), Chapter 22 (S.B. 17), Acts of the
 2-52 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
 2-53 Vernon's Texas Civil Statutes), is amended to read as follows:

2-54 (a) An educational institution may not:

2-55 (1) except as provided by Subdivision (8) of this
 2-56 subsection and Subsection (b) of this section, refuse to enter into
 2-57 a salary reduction agreement with an employee if the qualified
 2-58 investment product that is the subject of the salary reduction is an
 2-59 eligible qualified investment and is registered with the system
 2-60 under Section 8A;

2-61 (2) require or coerce an employee's attendance at any
 2-62 meeting at which qualified investment products are marketed;

2-63 (3) limit the ability of an employee to initiate,
 2-64 change, or terminate a qualified investment product at any time the
 2-65 employee chooses;

2-66 (4) grant exclusive access to an employee by
 2-67 discriminating against or imposing barriers to any agent, broker,
 2-68 or company that provides qualified investment products under this
 2-69 Act;

3-1 (5) grant exclusive access to information about an
 3-2 employee's financial information, including information about an
 3-3 employee's qualified investment products, to a company or agent or
 3-4 affiliate of a company offering qualified investment products
 3-5 unless the employee consents in writing to the access;

3-6 (6) accept any benefit from a company or from an agent
 3-7 or affiliate of a company that offers qualified investment
 3-8 products; ~~[or]~~

3-9 (7) use public funds to recommend a qualified
 3-10 investment product offered by a company or an agent or affiliate of
 3-11 a company that offers a qualified investment product; or

3-12 (8) enter into or continue a salary reduction
 3-13 agreement with an employee if the qualified investment product that
 3-14 is the subject of the salary reduction agreement is not an eligible
 3-15 qualified investment, including the investment product of a company
 3-16 whose certification has been denied, suspended, or revoked.

3-17 SECTION 5. Section 10(a), Chapter 22 (S.B. 17), Acts of the
 3-18 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
 3-19 Vernon's Texas Civil Statutes), is amended to read as follows:

3-20 (a) A person commits an offense if the person:

3-21 (1) sells or offers for sale an ~~[a qualified]~~
 3-22 investment product that is not an eligible qualified investment or
 3-23 that is not registered under Section 8A of this Act and that the
 3-24 person knows will be the subject of a salary reduction agreement;

3-25 (2) violates the licensing requirements of Title 13,
 3-26 Insurance Code, with regard to a qualified investment product that
 3-27 the person knows will be the subject of a salary reduction
 3-28 agreement; or

3-29 (3) engages in activity described by Subchapter B,
 3-30 Chapter 541, Insurance Code, with regard to a qualified investment
 3-31 product that the person knows will be the subject of a salary
 3-32 reduction agreement.

3-33 SECTION 6. Chapter 22 (S.B. 17), Acts of the 57th
 3-34 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
 3-35 Texas Civil Statutes), is amended by adding Section 10A to read as
 3-36 follows:

3-37 Sec. 10A. (a) A person who violates this Act is subject to a
 3-38 civil penalty in an amount that does not exceed:

3-39 (1) \$10,000 for a single violation; or

3-40 (2) \$1,000,000 for multiple violations.

3-41 (b) For purposes of determining the amount of a civil
 3-42 penalty under this section, the court shall consider the following
 3-43 factors:

3-44 (1) the seriousness, nature, circumstances, extent,
 3-45 and persistence of the conduct constituting the violation;

3-46 (2) the harm to other persons resulting directly or
 3-47 indirectly from the violation;

3-48 (3) cooperation by the person in any inquiry conducted
 3-49 by the state concerning the violation, efforts to prevent future
 3-50 occurrences of the violation, and efforts to mitigate the harm
 3-51 caused by the violation;

3-52 (4) the history of previous violations by the person;

3-53 (5) the need to deter the person or others from
 3-54 committing such violations in the future; and

3-55 (6) other matters as justice may require.

3-56 (c) The attorney general may institute an action:

3-57 (1) for injunctive relief to restrain a violation by a
 3-58 person who is or who appears to be in violation of or threatening to
 3-59 violate this Act; or

3-60 (2) to collect a civil penalty under this section.

3-61 (d) An action under this section must be filed in a district
 3-62 court in Travis County.

3-63 (e) The attorney general may recover reasonable expenses
 3-64 incurred in obtaining injunctive relief under this section,
 3-65 including court costs, reasonable attorney's fees, investigative
 3-66 costs, witness fees, and deposition expenses.

3-67 SECTION 7. (a) Section 9(a), Chapter 22 (S.B. 17), Acts of
 3-68 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
 3-69 Vernon's Texas Civil Statutes), as amended by this Act, applies to a

4-1 salary reduction agreement that is entered into or renewed on or
4-2 after the effective date of this Act. A salary reduction agreement
4-3 that is entered into or renewed before the effective date of this
4-4 Act is governed by the law in effect on the date the agreement was
4-5 entered into or renewed, and the former law remains in effect for
4-6 that purpose.

4-7 (b) Sections 9A and 9B, Chapter 22 (S.B. 17), Acts of the
4-8 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
4-9 Vernon's Texas Civil Statutes), as added by this Act, apply to a
4-10 contract to administer a plan under Section 403(b), Internal
4-11 Revenue Code of 1986, offered by a school district or
4-12 open-enrollment charter school that is entered into or renewed on
4-13 or after the effective date of this Act. A contract entered into or
4-14 renewed before the effective date of this Act is governed by the law
4-15 in effect on the date the contract was entered into or renewed, and
4-16 the former law remains in effect for that purpose.

4-17 (c) Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th
4-18 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
4-19 Texas Civil Statutes), as amended by this Act, and Section 10A,
4-20 Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called
4-21 Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as
4-22 added by this Act, apply only to a violation that occurs on or after
4-23 the effective date of this Act. A violation that occurred before
4-24 the effective date of this Act is covered by the law in effect at the
4-25 time the violation occurred, and the former law is continued in
4-26 effect for that purpose.

4-27 SECTION 8. This Act takes effect September 1, 2009.

4-28

* * * * *