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H.B. No. 3769

A BILL TO BE ENTITLED

AN ACT

relating to certain fraudulent investment schemes; providing penalties.

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

SECTION 1. Chapter 27, Business & Commerce Code, is amended by adding Section 27.03 to read as follows:

Sec. 27.03. FRAUDULENT PONZI SCHEME. (a) In this section:

(1) "Fraudulent Ponzi scheme" means any fraudulent investment operation that is managed in a manner that provides investors with returns derived substantially from investments made by other investors rather than from profits.

(2) "Promoting a fraudulent Ponzi scheme" means:

(A) inducing or attempting to induce one or more other persons to participate in a fraudulent Ponzi scheme; or

(B) assisting another person in inducing or attempting to induce one or more other persons to participate in a fraudulent Ponzi scheme, including by providing references.

(b) A person commits an offense if the person contrives, prepares, establishes, operates, advertises, sells, or promotes a fraudulent Ponzi scheme. An offense under this subsection is a felony of the first degree.

(c) Whenever it appears that a person has violated, or that reasonable cause exists to believe that a person is likely to violate, this chapter, the following persons may bring an action to

1 enjoin the violation or enforce compliance with this chapter:

2 (1) the attorney general;

3 (2) the district attorney of Travis County; or

4 (3) the prosecuting attorney of a county in which the
5 violation is alleged to have occurred.

6 (d) An action for injunctive relief brought by the attorney
7 general or the district attorney of Travis County must be brought in
8 a district court in Travis County. An action brought by a
9 prosecuting attorney under Subsection (c)(3) must be brought in a
10 district court in a county in which all or part of the violation is
11 alleged to have occurred.

12 (e) On a proper showing, the court may issue a restraining
13 order, an order freezing assets, a preliminary or permanent
14 injunction, or a writ of mandate, or may appoint a receiver for the
15 defendant or the defendant's assets.

16 (f) A receiver appointed by the court under Subsection (e)
17 may, with approval of the court, exercise all of the powers of the
18 defendant's directors, officers, partners, trustees, or persons
19 who exercise similar powers and perform similar duties.

20 (g) An action brought under this section may include a claim
21 for ancillary relief, including a claim for costs or civil
22 penalties authorized under this chapter, or for restitution or
23 damages on behalf of the persons injured by the act constituting the
24 subject matter of the action, and the court has jurisdiction to
25 award that relief.

26 (h) An investor in a fraudulent Ponzi scheme may recover up
27 to 50 percent of the investor's investment in a fraudulent Ponzi

1 scheme from the liquidation of assets owned by persons convicted of
2 contriving, preparing, establishing, operating, advertising,
3 selling, or promoting the fraudulent Ponzi scheme.

4 (i) The attorney general may seize and liquidate an asset of
5 a person convicted of violating this section that is located in any
6 state if the asset was purchased with funds derived substantially
7 from investments in the fraudulent Ponzi scheme by residents of
8 this state.

9 (j) The attorney general may investigate any transaction
10 involving a person charged with violating this section that
11 occurred up to six months before the indictment of the person.

12 (k) The attorney general may seize and liquidate any assets
13 transferred or sold to a third party with the intent to evade,
14 hinder, delay, or prevent the seizure and liquidation of assets as
15 prescribed by Subsection (i) by a person convicted of violating
16 this section.

17 SECTION 2. Chapter 17, Code of Criminal Procedure, is
18 amended by adding Article 17.153 to read as follows:

19 Art. 17.153. MINIMUM BAIL FOR PROMOTION OF FRAUDULENT PONZI
20 SCHEME. The minimum amount of bail required for a person charged
21 with a violation of Section 27.03, Business & Commerce Code, may not
22 be less than \$500,000.

23 SECTION 3. This Act takes effect September 1, 2009.