

By: Van de Putte

S.B. No. 2582

A BILL TO BE ENTITLED

AN ACT

1  
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), (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.

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

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

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

21 (2) a company owned by or otherwise affiliated by  
22 common ownership or control with a company described by Subdivision  
23 (1) of this section; or

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

26 Sec. 9B. A person, other than an employee of an educational  
27 institution, or an affiliate of the person may not enter into or

1 renew a contract under which the person is to provide services for  
2 or administer a plan offered by the institution under Section  
3 403(b), Internal Revenue Code of 1986, unless the person:

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

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

8 (3) is a financial institution that:

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

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

13 SECTION 6. Section 10(a), Chapter 22 (S.B. 17), Acts of the  
14 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,  
15 Vernon's Texas Civil Statutes), is amended to read as follows:

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

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

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

25 (3) engages in activity described by Subchapter B,  
26 Chapter 541, Insurance Code, with regard to a qualified investment  
27 product that the person knows will be the subject of a salary

1 reduction agreement.

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

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

8 (1) \$10,000 for a single violation; or

9 (2) \$1,000,000 for multiple violations.

10 (b) For purposes of determining the amount of a civil  
11 penalty under this section, the court shall consider the following  
12 factors:

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

15 (2) the harm to other persons resulting directly or  
16 indirectly from the violation;

17 (3) cooperation by the person in any inquiry conducted  
18 by the state concerning the violation, efforts to prevent future  
19 occurrences of the violation, and efforts to mitigate the harm  
20 caused by the violation;

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

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

24 (6) other matters as justice may require.

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

26 (1) for injunctive relief to restrain a violation by a  
27 person who is or who appears to be in violation of or threatening to



1 violate this Act; or

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

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

5 (e) The attorney general may recover reasonable expenses  
6 incurred in obtaining injunctive relief under this section,  
7 including court costs, reasonable attorney's fees, investigative  
8 costs, witness fees, and deposition expenses.

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

18 (b) Sections 9A and 9B, Chapter 22 (S.B. 17), Acts of the  
19 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,  
20 Vernon's Texas Civil Statutes), as added by this Act, apply to a  
21 contract to administer a plan under Section 403(b), Internal  
22 Revenue Code of 1986, offered by a school district or  
23 open-enrollment charter school that is entered into or renewed on  
24 or after the effective date of this Act. A contract entered into or  
25 renewed before the effective date of this Act is governed by the law  
26 in effect on the date the contract was entered into or renewed, and  
27 the former law remains in effect for that purpose.

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

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