

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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:
 - (A) meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;
 - (B) complies with applicable federal insurance and securities laws and regulations; and
 - (C) complies with applicable state insurance and securities laws and rules.
- (6) "Retirement system" means the Teacher Retirement System of Texas.
- (7) "Salary reduction agreement" means an agreement between an educational institution and an employee to

SENATE VERSION

Same as House version.

CONFERENCE

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

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

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

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

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

SENATE VERSION

Same as House version.

CONFERENCE

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Securities Board, as applicable, determines that a violation of this Act may have occurred, the Texas Department of Insurance, the Texas Department of Banking, or the State Securities Board, as applicable, shall forward the results of the investigation relating to an alleged violation of this Act to the attorney general.

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

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

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

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

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

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

(f) The retirement system may deny, suspend, ~~shall reject~~ or revoke the certification of a company if the

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

retirement system receives notice that [under Subsection (e) of this section or Section 5(e) of this Act of a violation regarding] the company or the company's product was determined to be in violation of this Act or another law in any judicial or administrative proceeding. (f-1) A [The] company whose certification is denied, suspended, or revoked under this section may recertify to the board of trustees after any applicable period of suspension or revocation.

SECTION 3. Section 8(a), 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:

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

- (1) the financial strength of the companies offering products; and
- (2) the administrative cost to employees.

SECTION 4. Section 9(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article

Same as House version.

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House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An educational institution may not:

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

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

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

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

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

(6) accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products; [øø]

(7) use public funds to recommend a qualified investment product offered by a company or an agent or

SENATE VERSION

6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An educational institution may not:

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

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

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

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

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

(6) accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products; [øø]

(7) use public funds to recommend a qualified investment product offered by a company or an agent or

CONFERENCE

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

No equivalent provision.

SENATE VERSION

affiliate of a company that offers a qualified investment product; or
(8) enter into or continue a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked without first providing the employee with notice in writing that:
(A) indicates the reason the subject of the salary reduction agreement is no longer an eligible qualified investment or why certification has been denied, suspended, or revoked; and
(B) clearly states that by signing the notice the employee is agreeing to enter into or continue the salary reduction agreement.

SECTION __. Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended by adding Sections 9A and 9B to read as follows:
Sec. 9A. A person, other than an employee of an educational institution, or an affiliate of the person may not enter into or renew a contract under which the person is to provide services for or administer a plan offered by the institution under Section 403(b), Internal Revenue Code of 1986, unless the person:
(1) holds a license or certificate of authority issued by the Texas Department of Insurance;

CONFERENCE

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

(3) is a financial institution that:

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

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

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

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

SECTION 5. Section 10(a), 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:

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

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

Same as House version.

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (2) violates the licensing requirements of Title 13, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement; or
- (3) engages in activity described by Subchapter B, Chapter 541, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement.

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

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

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

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

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

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

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

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

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

SENATE VERSION

Same as House version.

CONFERENCE

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(6) other matters as justice may require.

(c) The attorney general may institute an action:

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

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

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

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

SECTION 7. (a) Section 9(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), as amended by this Act, applies to a salary reduction agreement that is entered into or renewed on or after the effective date of this Act. A salary reduction agreement that is entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law remains in effect for that purpose.

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

SENATE VERSION

Same as House version.

CONFERENCE

House Bill 3480
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

SECTION 8. This Act takes effect September 1, 2009.

SENATE VERSION

Same as House version.

CONFERENCE