

## **BILL ANALYSIS**

S.B. 1281

By: Watson

Pensions, Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties assert that current fines for financial fraud do not reflect the complexity and size of today's financial markets and may not adequately deter fraud in general and fraud against senior citizens in particular. According to a recent survey, one out of every five senior citizens has been the victim of financial fraud. It has been reported that in a recent Texas case, a company was found to have fraudulently sold approximately \$30 million in investments to investors, many of whom were retired state employees and educators. The parties note that the penal provisions of The Securities Act have not been updated within the last two decades and are not correlated with the Penal Code.

S.B. 1281 seeks to increase various fines for certain violations of and offenses under The Securities Act.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1281 amends The Securities Act to add to the acts that are subject to the assessment of an administrative fine by the securities commissioner the act of materially aiding, with the intent to deceive or defraud or with reckless disregard for the truth or the law, any person engaging in fraud or a fraudulent practice in connection with the offer for sale of a security or the rendering of services as an investment adviser or investment adviser representative; making an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or engaging in an act or practice that violates The Securities Act or a State Securities Board rule or order. The bill increases the limit on the amount of an administrative fine, together with the amount of any civil penalty already awarded under Subsection C of Section 32, assessed by the commissioner from the cap of \$10,000 for a single violation or \$100,000 for multiple violations in a single proceeding or series of related proceedings to an amount not to exceed the greater of \$20,000 per violation or the gross amount of any economic benefit gained by the person or company as a result of the act or practice for which the fine was assessed and, if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than \$250,000.

S.B. 1281, in a provision specifying penalties for certain felony offenses under The Securities Act, classifies such offenses as third degree felonies, second degree felonies, first degree felonies, or state jail felonies, as applicable, and removes provisions describing the various penalties for a conviction of such offenses. The bill establishes that certain offenses in connection with the sale, offering for sale or delivery of, purchase, offer to purchase, invitation of offers to purchase or to sell, or dealing in any other manner in any security or securities apply as well to offenses in connection with the rendering of services as an investment advisor or an investment advisor representative. The bill authorizes an enhancement of a conviction of such offenses for repeat or habitual offenders.

S.B. 1281 makes the attorney general's authorization to seek equitable relief for a victim of fraudulent practice subject to a request of the commissioner and clarifies the extent of that authorization with respect to the attorney general seeking the disgorgement of any economic benefit gained by a defendant through an act or practice that violates The Securities Act or for which The Securities Act provides the commissioner or the attorney general with a remedy. The bill authorizes the court to order the defendant to deliver to each victim of any act or practice that violates The Securities Act or for which The Securities Act provides the commissioner or the attorney general with a remedy the amount of money or the property that the defendant obtained from the victim, including any bonus, fee, commission, option, proceeds, or profit from or loss avoided through the sale of the security or through the rendering of services as an investment adviser or investment adviser representative, or any other tangible benefit.

S.B. 1281 authorizes the attorney general, on the request of the commissioner, to seek a civil penalty to be paid to the state, together with the amount of any administrative fine already assessed under Subsection B of Section 23-1, in amount not to exceed the greater of \$20,000 per violation or the gross amount of any economic benefit gained by the person or company as a result of the commission of the act or practice and, if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than \$250,000. The bill authorizes the attorney general to recover reasonable costs and expenses incurred by the attorney general in bringing an action generally and not only from an order of disgorgement obtained under a particular provision of The Securities Act.

#### **EFFECTIVE DATE**

September 1, 2011.