

By: Truitt

H.B. No. 2342

A BILL TO BE ENTITLED

AN ACT

relating to certain violations of and offenses under The Securities Act; providing penalties.

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

SECTION 1. Subsections A and B, Section 23-1, The Securities Act (Article 581-23-1, Vernon's Texas Civil Statutes), are amended to read as follows:

A. After giving notice and opportunity for a hearing, the Commissioner may, in addition to any other remedies, issue an order which assesses an administrative fine against any person or company found to have:

(1) engaged in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; ~~or~~

(3) engaged in an act or practice that violates this Act or a Board rule or order; or

(4) with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided any person in engaging in an act or practice described by Subdivision (1) , (2),

1 or (3) of this subsection.

2 B. Any administrative fine assessed under this Section,  
3 together with the amount of any civil penalty already awarded under  
4 Subsection C of Section 32, must be in an amount not to exceed:

5 (1) the greater of:

6 (A) \$20,000 per violation; or

7 (B) the gross amount of any economic benefit  
8 gained by the person or company a result of the act or practice for  
9 which the fine was assessed; and

10 (2) if the act or practice was committed against a  
11 person 65 years of age or older, an additional amount of not more  
12 than \$250,000 [~~that does not exceed \$10,000 for a single violation~~  
13 ~~or \$100,000 for multiple violations in a single proceeding or a~~  
14 ~~series of related proceedings)].~~

15 SECTION 2. Section 29, The Securities Act (Article 581-29,  
16 Vernon's Texas Civil Statutes), is amended to read as follows:

17 Art. 581-29. PENAL PROVISIONS. Any person who shall:

18 A. Sell, offer for sale or delivery, solicit subscriptions  
19 or orders for, dispose of, invite offers for, or who shall deal in  
20 any other manner in any security or securities without being a  
21 registered dealer or agent as in this Act provided shall be deemed  
22 guilty of a felony of the third degree [~~and upon conviction~~  
23 ~~thereof shall be sentenced to pay a fine of not more than \$5,000 or~~  
24 ~~imprisonment in the penitentiary for not less than two or more than~~  
25 ~~10 years, or by both such fine and imprisonment)].~~

26 B. Sell, offer for sale or delivery, solicit subscriptions  
27 to and orders for, dispose of, invite orders for, or who shall deal

1 in any other manner in any security or securities issued after  
2 September 6, 1955, unless said security or securities have been  
3 registered or granted a permit as provided in Section 7 of this Act,  
4 shall be deemed guilty of a felony of the third degree [~~and upon~~  
5 ~~conviction thereof shall be sentenced to pay a fine of not more than~~  
6 ~~\$5,000 or imprisonment in the penitentiary for not less than two or~~  
7 ~~more than 10 years, or by both such fine and imprisonment)].~~

8 C. In connection with the sale, offering for sale or delivery  
9 of, the purchase, offer to purchase, invitation of offers to  
10 purchase, invitations of offers to sell, or dealing in any other  
11 manner in any security or securities, whether or not the  
12 transaction or security is exempt under Section 5 or 6 of this Act,  
13 or in connection with the rendering of services as an investment  
14 adviser or an investment adviser representative, directly or  
15 indirectly:

16 (1) engage in any fraud or fraudulent practice;  
17 (2) employ any device, scheme, or artifice to defraud;  
18 (3) knowingly make any untrue statement of a material  
19 fact or omit to state a material fact necessary in order to make the  
20 statements made, in the light of the circumstances under which they  
21 are made, not misleading; or

22 (4) engage in any act, practice or course of business  
23 which operates or will operate as a fraud or deceit upon any person,  
24 is [~~guilty of a felony and upon conviction shall be~~]:

25 (a) guilty of a felony of the third degree  
26 [~~imprisoned for not less than 2 or more than 10 years and fined not~~  
27 ~~more than \$10,000~~], if the amount involved in the offense is less

1 than \$10,000;

2 (b) guilty of a felony of the second degree  
3 ~~[imprisoned for not less than 2 or more than 20 years and fined not~~  
4 ~~more than \$10,000]~~, if the amount involved in the offense is \$10,000  
5 or more but less than \$100,000; or

6 (c) guilty of a felony of the first degree  
7 ~~[imprisoned for life or for not less than 5 or more than 99 years and~~  
8 ~~fined not more than \$10,000]~~, if the amount involved is \$100,000 or  
9 more.

10 D. Knowingly violate a cease and desist order issued by the  
11 commissioner under the authority of Section 23A, 23B, or 23-2 of  
12 this Act shall be deemed guilty of a felony of the third degree [~~7~~  
13 ~~and upon conviction thereof shall be sentenced to pay a fine of not~~  
14 ~~more than \$5,000 or imprisonment in the penitentiary for not more~~  
15 ~~than two years, or by both such fine and imprisonment)].~~

16 E. Knowingly make or cause to be made, in any document filed  
17 with the commissioner or in any proceeding under this Act, whether  
18 or not such document or proceeding relates to a transaction or  
19 security exempt under the provisions of Sections 5 or 6 of this Act,  
20 any statement which is, at the time and in the light of the  
21 circumstances under which it is made, false or misleading in any  
22 material respect shall be deemed guilty of a felony of the third  
23 degree [~~7~~ ~~and upon conviction thereof shall be sentenced to pay a~~  
24 ~~fine of not more than \$5,000 or imprisonment in the penitentiary for~~  
25 ~~not less than two or more than 10 years, or by both such fine and~~  
26 ~~imprisonment)].~~

27 F. Knowingly make any false statement or representation

1 concerning any registration made or exemption claimed under the  
2 provisions of this Act shall be deemed guilty of a state jail  
3 felony[, ~~and upon conviction thereof shall be sentenced to pay a~~  
4 ~~fine of not more than \$5,000 or imprisonment in the penitentiary for~~  
5 ~~not more than two years, or by both such fine and imprisonment].~~

6 G. Make an offer of any security within this State that is  
7 not in compliance with the requirements governing offers set forth  
8 in Section 22 of this Act shall be deemed guilty of a state jail  
9 felony[, ~~and upon conviction thereof, shall be sentenced to pay a~~  
10 ~~fine of not more than \$5,000 or imprisonment in the penitentiary for~~  
11 ~~not more than two years, or by both such fine and imprisonment].~~

12 H. Knowingly make an offer of any security within this State  
13 prohibited by a cease publication order issued by the Commissioner  
14 under Section 23C of this Act shall be deemed guilty of a state jail  
15 felony[, ~~and upon conviction thereof, shall be sentenced to pay a~~  
16 ~~fine of not more than \$5,000 or imprisonment in the penitentiary for~~  
17 ~~not more than two years, or by both such fine and imprisonment].~~

18 I. Render services as an investment adviser or an investment  
19 adviser representative without being registered as required by this  
20 Act shall be deemed guilty of a felony of the third degree [~~and on~~  
21 ~~conviction of the felony shall be sentenced to pay a fine of not~~  
22 ~~more than \$5,000 or imprisonment in the penitentiary for not less~~  
23 ~~than two or more than 10 years, or by both the fine and~~  
24 ~~imprisonment].~~

25 J. A conviction of an offense under this section may be  
26 enhanced as provided by Section 12.42, Penal Code.

27 SECTION 3. Section 32, The Securities Act (Article 581-32,

1 Vernon's Texas Civil Statutes), is amended to read as follows:

2           Art. 581-32. INJUNCTIONS, [AND] RESTITUTION, AND CIVIL  
3 PENALTIES. A. Whenever it shall appear to the Commissioner either  
4 upon complaint or otherwise, that any person has engaged, is  
5 engaging, or is about to engage in fraud or a fraudulent practice in  
6 connection with the sale of a security, has engaged, is engaging, or  
7 is about to engage in fraud or a fraudulent practice in the  
8 rendering of services as an investment adviser or investment  
9 adviser representative, has made an offer containing a statement  
10 that is materially misleading or is otherwise likely to deceive the  
11 public, or has engaged, is engaging, or is about to engage in an act  
12 or practice that violates this Act or a Board rule or order, the  
13 Attorney General may, on request by the Commissioner, and in  
14 addition to any other remedies, bring action in the name and on  
15 behalf of the State of Texas against such person or company and any  
16 person who, with intent to deceive or defraud or with reckless  
17 disregard for the truth or the law, has materially aided, is  
18 materially aiding, or is about to materially aid such person and any  
19 other person or persons heretofore concerned in or in any way  
20 participating in or about to participate in such acts or practices,  
21 to enjoin such person or company and such other person or persons  
22 from continuing such acts or practices or doing any act or acts in  
23 furtherance thereof. The Commissioner shall verify, on information  
24 and belief, the facts contained in an application for injunction  
25 under this section. In any such court proceedings, the Attorney  
26 General may apply for and on due showing be entitled to have issued  
27 the court's subpoena requiring the forthwith appearance of any

1 defendant and the defendant's employees or agents and the  
2 production of documents, books and records as may appear necessary  
3 for the hearing of such petition, to testify and give evidence  
4 concerning the acts or conduct or things complained of in such  
5 application for injunction. The District Court of any county,  
6 wherein it is shown that the acts complained of have been or are  
7 about to be committed, or a district court in Travis County shall  
8 have jurisdiction of any action brought under this section, and  
9 this provision shall be superior to any provision fixing the  
10 jurisdiction or venue with regard to suits for injunction. No bond  
11 for injunction shall be required of the Commissioner or Attorney  
12 General in any such proceeding.

13 B. In addition to any other remedies, the [The] Attorney  
14 General may, on the request of the Commissioner, either in an action  
15 under Subsection A of this section or in a separate action in  
16 District Court, seek equitable relief, including restitution, for a  
17 victim of fraudulent practices and may seek the disgorgement of any  
18 economic benefit gained by a defendant through an act or practice  
19 that violates this Act or for which this Act provides the  
20 Commissioner or the Attorney General with a remedy. The court may  
21 grant any equitable relief that the court considers appropriate and  
22 may order the defendant to deliver to each victim of any act or  
23 practice that violates this Act or for which this Act provides the  
24 Commissioner or the Attorney General with a remedy [the person  
25 defrauded] the amount of money or the property that the defendant  
26 obtained from the victim, including any bonus, fee, commission,  
27 option, proceeds, or profit from or loss avoided through the sale of

1 the security or through the rendering of services as an investment  
2 adviser or investment adviser representative, or any other tangible  
3 benefit [person by the fraudulent practices].

4 C. In addition to any other remedies, the Attorney General  
5 may, on the request of the Commissioner, either in an action under  
6 Subsection A of this section or in a separate action in District  
7 Court, seek a civil penalty to be paid to the State in an amount,  
8 together with the amount of any administrative fine already  
9 assessed under Subsection B of Section 23-1, not to exceed:

10 (1) the greater of:

11 (A) \$20,000 per violation; or

12 (B) the gross amount of any economic benefit  
13 gained by the person or company as a result of the commission of the  
14 act or practice; and

15 (2) if the act or practice was committed against a  
16 person 65 years of age or older, an additional amount of not more  
17 than \$250,000.

18 D. In an action brought under this section, the [for fraud or  
19 a fraudulent practice in connection with the sale of a security, the  
20 Attorney General may seek, for an aggrieved person, the  
21 disgorgement of any economic benefit gained by the defendant  
22 through the violation, including a bonus, fee, commission, option,  
23 proceeds, profit from or loss avoided through the sale of the  
24 security, or any other tangible benefit. The] Attorney General may  
25 recover [from an order of disgorgement obtained under this  
26 subsection] reasonable costs and expenses incurred by the Attorney  
27 General in bringing the action.



1           SECTION 4. (a) The changes in law made by this Act apply  
2 only to a violation that occurs or an offense committed on or after  
3 the effective date of this Act. A violation that occurs or an  
4 offense committed before the effective date of this Act is governed  
5 by the law in effect on the date the violation occurred or the  
6 offense was committed, and the former law is continued in effect for  
7 that purpose.

8           (b) For purposes of Subsection (a) of this section, a  
9 violation occurred or an offense was committed before the effective  
10 date of this Act if any element of the violation or offense occurred  
11 before that date.

12           SECTION 5. This Act takes effect September 1, 2011.