

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 must
3 be in an amount not to exceed:

4 (1) the greater of:

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

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

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

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

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

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

25 B. Sell, offer for sale or delivery, solicit subscriptions
26 to and orders for, dispose of, invite orders for, or who shall deal
27 in any other manner in any security or securities issued after

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

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

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

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

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

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

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

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

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

26 F. Knowingly make any false statement or representation
27 concerning any registration made or exemption claimed under the

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

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

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

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

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

26 SECTION 3. Section 32, The Securities Act (Article 581-32,
27 Vernon's Texas Civil Statutes), is amended to read as follows:

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

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

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

1 adviser or investment adviser representative, or any other tangible
2 benefit [person by the fraudulent practices].

3 C. In addition to any other remedies, the Attorney General
4 may, on the request of the Commissioner, either in an action under
5 Subsection A of this section or in a separate action in District
6 Court, seek a civil penalty to be paid to the State in an amount not
7 to exceed:

8 (1) the greater of:

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

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

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

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

26 SECTION 4. (a) The changes in law made by this Act apply
27 only to a violation that occurs or an offense committed on or after

1 the effective date of this Act. A violation that occurs or an
2 offense committed before the effective date of this Act is governed
3 by the law in effect on the date the violation occurred or the
4 offense was committed, and the former law is continued in effect for
5 that purpose.

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

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