

BILL ANALYSIS

C.S.H.B. 3486
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that, although saving for college is associated with higher educational attainment and lower rates of poverty, low-income families are significantly less likely to enroll in state-sponsored 529 college savings plans, in part because current law does not explicitly authorize nonprofit providers to assist certain low-income individuals with 529 plan enrollment. In addition, these parties assert that low-income families face barriers to saving in the form of asset limitations for some public benefit programs, such as the child health plan program, Children's Medicaid, the supplemental nutrition assistance program, and the Temporary Assistance for Needy Families program, which penalize participation in formal financial institutions and may further discourage certain Texans from achieving long-term financial stability. C.S.H.B. 3486 seeks to address these challenges by providing avenues for nonprofit charitable organizations to help clients enroll in Texas' 529 plans and to encourage mainstream banking.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas and the State Securities Board in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3486 amends the Finance Code to require the Office of Consumer Credit Commissioner to establish and operate a voluntary certification program for a person serving as a financial coach for the clients of a charitable organization. The bill requires the Finance Commission of Texas by rule to adopt forms, criteria, and procedures for issuing such certificates to financial coaches. The bill requires the criteria for the program to include training and education materials to be determined by the finance commission.

C.S.H.B. 3486 authorizes the securities commissioner to issue a no-action letter to a financial coach issued a certificate under the bill's provisions who, without compensation, provides to an economically disadvantaged individual assistance with the individual's enrollment in any fund or plan established under Education Code provisions relating to the higher education savings plan or the Texas tomorrow fund II. The bill requires the State Securities Board to adopt rules implementing these provisions.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3486 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

ARTICLE 1. FINANCIAL COACHES ASSISTING CLIENTS OF CERTAIN NONPROFIT ORGANIZATIONS

No equivalent provision.

SECTION 1.01. Section 5, The Securities Act (Article 581-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. EXEMPT TRANSACTIONS. Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

A. At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy.

No equivalent provision.

B. The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt.

No equivalent provision.

C. (1) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not engaged in the business of selling securities and the sale or sales are isolated transactions not made in the course of repeated and successive transactions of a like character; provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a usual commission to said agent), and provided further, that any person acting as agent for said vendor shall be registered

No equivalent provision.

pursuant to this Act;

(2) Sales by or on behalf of any insurance company subject to the supervision or control of the Texas Department of Insurance of any security owned by such company as a legal and bona fide investment, provided that in no event shall any such sale or offering be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

D. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

No equivalent provision.

E. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this State.

No equivalent provision.

F. The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them.

No equivalent provision.

G. The issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of

No equivalent provision.

incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

H. The sale of any security to any bank, trust company, building and loan association, insurance company, surety or guaranty company, savings institution, investment company as defined in the Investment Company Act of 1940, small business investment company as defined in the Small Business Investment Act of 1958, as amended, or to any registered dealer actually engaged in buying and selling securities.

No equivalent provision.

I. Provided such sale is made without any public solicitation or advertisements:

(a) the sale of any security by the issuer thereof so long as the total number of security holders of the issuer thereof does not exceed thirty-five (35) persons after taking such sale into account;

(b) the sale or distribution by an issuer or a participating subsidiary of the issuer, if any, of a security under a bona fide thrift, savings, stock purchase, retirement, pension, profit-sharing, option, bonus, appreciation right, incentive, or similar written compensation plan or written compensation contract established by the issuer or its subsidiary for the benefit of employees, directors, general partners, managers, or officers of the issuer or subsidiary, for the benefit of its trustees if the issuer or subsidiary is a business trust, or for the benefit of consultants or advisors who provide to the issuer or subsidiary bona fide services unrelated to the offer or sale of securities in a capital-raising transaction; or

(c) the sale by an issuer of its securities during the period of twelve (12) months ending with the date of the sale in question to not more than fifteen (15) persons

No equivalent provision.

(excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

J. Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction.

No equivalent provision.

K. Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof.

No equivalent provision.

L. The sale by the issuer itself, or by a registered dealer, of any security issued or guaranteed by any bank organized and subject to regulation under the laws of the United States or under the laws of any State or territory of the United States, or any insular possession thereof, or by any savings and loan association organized and subject to regulation under the laws of this State, or the sale by the issuer itself of any security issued by any federal savings and loan association.

No equivalent provision.

M. The sale by the issuer itself, or by a registered dealer, of any security either issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States, or political subdivision thereof (including but not limited to any county, city, municipal corporation, district, or authority), or by any public or governmental agency or

No equivalent provision.

instrumentality of any of the foregoing.

N. The sale and issuance of any securities issued by any farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes); the sale and issuance of any securities issued by any mutual loan corporation organized under Chapter 54, Agriculture Code, or the predecessor of that law (Article 2500 et seq., Revised Statutes); the sale and issuance of any equity securities issued by any cooperative association organized under the Cooperative Association Act, as amended (Article 1396-50.01, Vernon's Texas Civil Statutes); and the sale of any securities issued by any farmers' cooperative society organized under Chapter 51, Agriculture Code, or the predecessor of that law (Article 2514 et seq., Revised Statutes). Provided, however, this exemption shall not be applicable to agents of any farmers' cooperative marketing association, mutual loan corporation, cooperative association, or farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents.

No equivalent provision.

O. The sale by a registered dealer of outstanding securities provided that:

- (1) Such securities form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof; and
- (2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and
- (3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and
- (4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and
- (5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and
- (6) The right to sell or resell such securities has not been enjoined by any court of

No equivalent provision.

competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(7) The right to sell such securities has not been revoked or suspended by the commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect; and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the commissioner, filed with the commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;

(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and

(c) Profit and loss statements and a record of the dividends paid, if any, for a period of not less than three (3) years prior to the date of such balance sheet or for the period of existence of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" means a nationally distributed manual of securities that is approved for use hereunder by the Board.

The Commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection 0 with respect to any security if the Commissioner has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by

certified or registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (6) and (7) above of this Subsection 0 shall be inapplicable to any dealer until the dealer has received actual notice from the commissioner of such revocation or suspension.

The Board may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved under this Subsection but no such action may be taken unless upon notice and opportunity for hearing before the Board or a hearings officer as now or hereafter required by law. A judgment sustaining the Board in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the Board from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

P. The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser.

No equivalent provision.

Q. The sales of interests in and under oil, gas or mining leases, fees or titles, or contracts relating thereto, where (1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided in any single oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed thirty-five (35) within a period of twelve (12) consecutive months and (2) no use is made of advertisement or public solicitation; provided, however, if such sale or sales are made by an agent for such owner or owners, such agent shall be licensed pursuant to this Act. No oil, gas or mineral unitization or pooling agreement shall be deemed a sale under this Act.

No equivalent provision.

R. The sale by the issuer itself, or by a subsidiary of such issuer, of any securities which would be exempt if sold by a registered dealer under Section 6 (other than Section 6E) of this Act.

No equivalent provision.

S. The sale by or through a registered dealer of any option if at the time of the sale of the option:

No equivalent provision.

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the board;

(2) the option is not sold by or for the benefit of the issuer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the NASDAQ stock market and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection 0 of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term "option" shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

T. Such other transactions or conditions as the board by rule, regulation, or order may define or prescribe, conditionally or unconditionally.

No equivalent provision.

U. The issuance or transfer of securities by the issuer of its securities to a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, only if:

No equivalent provision.

- (a) the corporation or association does not provide anything of value for the securities other than, in the case of any security that is an option, payment of the exercise price of the option to acquire the securities at a price not to exceed the fair market value of the underlying securities on the date the option was granted;
- (b) the issuance or transfer of securities is not made for the purpose of raising capital for the issuer;
- (c) no commission or other form of consideration is paid or provided to a third party with respect to the issuance or transfer; and
- (d) the issuance or transfer is not directly or indirectly for the purpose of providing or furthering a scheme in violation of or to evade this Act.

V. The sale of a security involving an individual's enrollment in any fund or plan established under Subchapter G or H, Chapter 54, Education Code, that is arranged or facilitated by a financial coach certified under Section 14.1021, Finance Code, who is working for a nonprofit corporation that:

- (a) is located in this State;
- (b) is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c)(3) of that code; and
- (c) provides services to economically disadvantaged individuals and families.

SECTION 1.02. Subchapter C, Chapter 14, Finance Code, is amended by adding Section 14.1021 to read as follows:

Sec. 14.1021. CERTIFICATION PROGRAM FOR FINANCIAL COACHES. (a) In this section, "charitable organization" means a nonprofit corporation that:

- (1) is located in this state;
 - (2) is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code; and
 - (3) provides services to economically disadvantaged individuals and families.
- (b) The **commission** shall establish and

No equivalent provision.

SECTION 1. Subchapter C, Chapter 14, Finance Code, is amended by adding Section 14.1021 to read as follows:

Sec. 14.1021. CERTIFICATION PROGRAM FOR FINANCIAL COACHES. (a) In this section, "charitable organization" means a nonprofit corporation that:

- (1) is located in this state;
 - (2) is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code; and
 - (3) provides services to economically disadvantaged individuals and families.
- (b) The **office** shall establish and operate a

operate a voluntary certification program for persons serving as financial coaches for clients of charitable organizations.

(c) The finance commission by rule shall adopt forms, criteria, and procedures for issuing certificates to financial coaches under this section.

(d) The criteria for the program must include training in investing in securities and providing educational materials and information regarding the state securities laws.

voluntary certification program for persons serving as financial coaches for clients of charitable organizations.

(c) The finance commission by rule shall adopt forms, criteria, and procedures for issuing certificates to financial coaches under this section.

(d) The criteria for the program must include training and educational materials to be determined by the finance commission.

(e) The securities commissioner may issue a no-action letter to a financial coach issued a certificate under this section who, without compensation, provides to an economically disadvantaged individual assistance with the individual's enrollment in any fund or plan established under Subchapter G or H, Chapter 54, Education Code. The State Securities Board shall adopt rules to implement this subsection.

SECTION 1.03. Section 393.628, Finance Code, is amended by adding Subsection (g) to read as follows:

(g) In awarding money under the fund for financial coaching activities or initiatives, the finance commission shall give priority to applicants who are certified financial coaches under Section 14.1021.

No equivalent provision.

ARTICLE 2. PROVISIONS TO ENCOURAGE RECIPIENTS OF CERTAIN BENEFITS PROGRAMS TO SAVE MONEY

Sec. 2.01. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0911 to read as follows:

Sec. 531.0911. EXCLUSION OF CERTAIN INCOME, ASSETS, AND RESOURCES FOR PURPOSES OF DETERMINING ELIGIBILITY UNDER CERTAIN BENEFITS PROGRAMS. (a) In this section, "benefits program" includes:

- (1) the child health plan program;
- (2) the financial assistance program under Chapter 31, Human Resources Code;
- (3) the medical assistance program under Chapter 32, Human Resources Code; and
- (4) the nutritional assistance programs under Chapter 33, Human Resources Code, including the supplemental nutrition

No equivalent provision.

assistance program under that chapter.

(b) To the extent permitted under applicable federal law and notwithstanding any other state law, if a benefits program administered by the commission or a health and human services agency imposes income, asset, or resource requirements for purposes of determining whether a person is eligible for assistance or the amount of assistance for which a person is eligible under the program, the commission or health and human services agency may not include as available income, assets, or resources of the person:

(1) any ownership interest the person has in:

(A) a United States savings bond; or

(B) a structured savings program or product; or

(2) an amount equal to the sum of federal income tax refunds received by the person as a result of claiming refundable federal income tax credits, including the earned income tax credit, child tax credit, and other refundable credits.

(c) For purposes of this section and subject to Subsection (d), "savings program or product" means a program or product, including but not limited to emergency savings products, tax-time savings products, children's savings accounts, and Individual Development Accounts not authorized by the federal Assets for Independence Act:

(1) offered or coordinated by or in partnership with a nonprofit organization that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c)(3) of that code and meeting all other applicable requirements for that exemption; or offered by other entities and

(2) offered for the purpose of encouraging savings and financial independence by recipients.

(d) The commission shall provide information about and referrals to providers of structured savings programs or products to recipients of a benefits program under Subsection (a) through its self-service portal;

(e) The executive commissioner shall adopt rules to define "structured savings program or product" for purposes of this section.

SECTION 2.02. The change in law made by this article applies to an initial determination or redetermination of eligibility of a person for assistance under a benefits program that is made on or after the effective date of this Act.

No equivalent provision.

SECTION 2.03. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

No equivalent provision.

SECTION 3.01. This Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.