

By: Villarreal

H.B. No. 3486

A BILL TO BE ENTITLED

1 AN ACT
2 relating to financial inclusion through financial coaching and
3 removal of other barriers to saving for economically disadvantaged
4 persons.

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

6 ARTICLE 1. FINANCIAL COACHES ASSISTING CLIENTS OF CERTAIN NONPROFIT
7 ORGANIZATIONS

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

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

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

22 B. The sale by or for the account of a pledge holder or
23 mortgagee, selling or offering for sale or delivery in the ordinary
24 course of business to liquidate a bona fide debt, of a security

1 pledged in good faith as security for such debt.

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

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

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

26 E. Any offer and any transaction pursuant to any offer
27 by the issuer of its securities to its existing security holders

1 (including persons who at the time of the transaction are holders of
2 convertible securities or nontransferable warrants) if no
3 commission or other remuneration (other than a stand-by commission)
4 is paid or given directly or indirectly for soliciting any security
5 holder in this State.

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

19 G. The issue or sale of securities (a) by one
20 corporation to another corporation or the security holders thereof
21 pursuant to a vote by one or more classes of such security holders,
22 as required by the certificate of incorporation or the applicable
23 corporation statute, in connection with a merger, consolidation or
24 sale of corporate assets, or (b) by one corporation to its own
25 stockholders in connection with the change of par value stock to no
26 par value stock or vice versa, or the exchange of outstanding shares
27 for the same or a greater or smaller number of shares; provided that

1 in any such case such security holders do not pay or give or promise
2 and are not obligated to pay or give any consideration for the
3 securities so issued or sold other than the securities of the
4 corporation then held by them.

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

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

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

18 (b) the sale or distribution by an issuer or a
19 participating subsidiary of the issuer, if any, of a security under
20 a bona fide thrift, savings, stock purchase, retirement, pension,
21 profit-sharing, option, bonus, appreciation right, incentive, or
22 similar written compensation plan or written compensation contract
23 established by the issuer or its subsidiary for the benefit of
24 employees, directors, general partners, managers, or officers of
25 the issuer or subsidiary, for the benefit of its trustees if the
26 issuer or subsidiary is a business trust, or for the benefit of
27 consultants or advisors who provide to the issuer or subsidiary

1 bona fide services unrelated to the offer or sale of securities in a
2 capital-raising transaction; or

3 (c) the sale by an issuer of its securities
4 during the period of twelve (12) months ending with the date of the
5 sale in question to not more than fifteen (15) persons (excluding,
6 in determining such fifteen (15) persons, purchasers of securities
7 in transactions exempt under other provisions of this Section 5,
8 purchasers of securities exempt under Section 6 hereof and
9 purchasers of securities which are part of an offering registered
10 under Section 7 hereof), provided such persons purchased such
11 securities for their own account and not for distribution.

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

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

25 L. The sale by the issuer itself, or by a registered
26 dealer, of any security issued or guaranteed by any bank organized
27 and subject to regulation under the laws of the United States or

1 under the laws of any State or territory of the United States, or
2 any insular possession thereof, or by any savings and loan
3 association organized and subject to regulation under the laws of
4 this State, or the sale by the issuer itself of any security issued
5 by any federal savings and loan association.

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

14 N. The sale and issuance of any securities issued by
15 any farmers' cooperative marketing association organized under
16 Chapter 52, Agriculture Code, or the predecessor of that law
17 (Article 5737 et seq., Revised Statutes); the sale and issuance of
18 any securities issued by any mutual loan corporation organized
19 under Chapter 54, Agriculture Code, or the predecessor of that law
20 (Article 2500 et seq., Revised Statutes); the sale and issuance of
21 any equity securities issued by any cooperative association
22 organized under the Cooperative Association Act, as amended
23 (Article 1396-50.01, Vernon's Texas Civil Statutes); and the sale
24 of any securities issued by any farmers' cooperative society
25 organized under Chapter 51, Agriculture Code, or the predecessor of
26 that law (Article 2514 et seq., Revised Statutes). Provided,
27 however, this exemption shall not be applicable to agents of any

1 farmers' cooperative marketing association, mutual loan
2 corporation, cooperative association, or farmers' cooperative
3 society when the sale of such securities is made to non-members, or
4 when the sale of such securities is made to members or non-members
5 and a commission is paid or contracted to be paid to the said
6 agents.

7 0. The sale by a registered dealer of outstanding
8 securities provided that:

9 (1) Such securities form no part of an unsold
10 allotment to or subscription by such dealer as a participant in the
11 distribution of such securities by the issuer thereof; and

12 (2) Securities of the same class, of the same
13 issuer, are outstanding in the hands of the public; and

14 (3) Such securities are offered for sale, in good
15 faith, at prices reasonably related to the current market price of
16 such securities at the time of such sale; and

17 (4) No part of the proceeds of such sale are paid
18 directly or indirectly to the issuer of such securities; and

19 (5) Such sale is not directly or indirectly for
20 the purposes of providing or furthering any scheme to violate or
21 evade any provision of this Act; and

22 (6) The right to sell or resell such securities
23 has not been enjoined by any court of competent jurisdiction in this
24 State by proceedings instituted by an officer or agency of this
25 State charged with enforcement of this Act; and

26 (7) The right to sell such securities has not
27 been revoked or suspended by the commissioner under any of the

1 provisions of this Act, or, if so, revocation or suspension is not
2 in force and effect; and

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

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

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

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

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

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

26 The Commissioner may issue a stop order or by
27 order prohibit, revoke or suspend the exemption under this

1 Subsection 0 with respect to any security if the Commissioner has
2 reasonable cause to believe that the plan of business of the issuer
3 of such security, the security, or the sale thereof would tend to
4 work a fraud or deceit upon any purchaser or purchasers thereof,
5 such order to be subject to review in the manner provided by Section
6 24 of this Act. Notice of any court injunction enjoining the sale,
7 or resale, of any such security, or of an order revoking or
8 suspending the exemption under this subdivision with respect to any
9 security, shall be delivered or shall be mailed by certified or
10 registered mail with return receipt requested, to any dealers
11 believed to be selling, or offering for sale, securities of the type
12 referred to in the notice; and the prohibitions of (6) and (7) above
13 of this Subsection 0 shall be inapplicable to any dealer until the
14 dealer has received actual notice from the commissioner of such
15 revocation or suspension.

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

26 P. The execution by a dealer of an unsolicited order
27 for the purchase of securities, where the initial offering of such

1 securities has been completed and provided that the dealer acts
2 solely as an agent for the purchaser, has no direct or indirect
3 interest in the sale or distribution of the security ordered, and
4 receives no commission, profit, or other compensation from any
5 source other than the purchaser.

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

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

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

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

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

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

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

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

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

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

27 (a) the corporation or association does not

1 provide anything of value for the securities other than, in the case
2 of any security that is an option, payment of the exercise price of
3 the option to acquire the securities at a price not to exceed the
4 fair market value of the underlying securities on the date the
5 option was granted;

6 (b) the issuance or transfer of securities is not
7 made for the purpose of raising capital for the issuer;

8 (c) no commission or other form of consideration
9 is paid or provided to a third party with respect to the issuance or
10 transfer; and

11 (d) the issuance or transfer is not directly or
12 indirectly for the purpose of providing or furthering a scheme in
13 violation of or to evade this Act.

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

19 (a) is located in this State;

20 (b) is exempt from federal income tax under
21 Section 501(a), Internal Revenue Code of 1986, by being listed as an
22 exempt organization in Section 501(c)(3) of that code; and

23 (c) provides services to economically
24 disadvantaged individuals and families.

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

27 Sec. 14.1021. CERTIFICATION PROGRAM FOR FINANCIAL COACHES.

1 (a) In this section, "charitable organization" means a nonprofit
2 corporation that:

3 (1) is located in this state;

4 (2) is exempt from federal income tax under Section
5 501(a) of the Internal Revenue Code of 1986 by being listed as an
6 exempt organization in Section 501(c)(3) of that code; and

7 (3) provides services to economically disadvantaged
8 individuals and families.

9 (b) The commission shall establish and operate a voluntary
10 certification program for persons serving as financial coaches for
11 clients of charitable organizations.

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

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

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

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

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

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

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

5 (1) the child health plan program;

6 (2) the financial assistance program under Chapter 31,
7 Human Resources Code;

8 (3) the medical assistance program under Chapter 32,
9 Human Resources Code; and

10 (4) the nutritional assistance programs under Chapter
11 33, Human Resources Code, including the supplemental nutrition
12 assistance program under that chapter.

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

21 (1) any ownership interest the person has in:

22 (A) a United States savings bond; or

23 (B) a structured savings program or product; or

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

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

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

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

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

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

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

26 SECTION 2.03. If before implementing any provision of this
27 article a state agency determines that a waiver or authorization

1 from a federal agency is necessary for implementation of that
2 provision, the agency affected by the provision shall request the
3 waiver or authorization and may delay implementing that provision
4 until the waiver or authorization is granted.

5 ARTICLE 3. EFFECTIVE DATE

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