

By: Birdwell, Huffines, Whitmire

S.B. No. 612

A BILL TO BE ENTITLED

1 AN ACT
2 relating to complaints filed with and certain other filings
3 submitted to the Texas Ethics Commission.

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

5 SECTION 1. Section 571.0771(b), Government Code, is amended
6 to read as follows:

7 (b) Subsection (a) does not apply to:

8 (1) a penalty imposed under Section 571.069 or
9 Subchapter [~~E-or~~] F; or

10 (2) a report required to be filed under Section
11 [~~254.038, 254.039,~~] 254.064(c), 254.124(c), or 254.154(c),
12 Election Code.

13 SECTION 2. Section 571.097, Government Code, is amended to
14 read as follows:

15 Sec. 571.097. DEFENSES: [~~DEFENSE FOR~~] RELIANCE ON ADVISORY
16 OPINION; COMMISSION'S FAILURE TO ISSUE OPINION. (a) It is a
17 defense to prosecution or to imposition of a civil penalty that the
18 person reasonably relied on a written advisory opinion of the
19 commission relating to the provision of the law the person is
20 alleged to have violated or relating to a fact situation that is
21 substantially similar to the fact situation in which the person is
22 involved.

23 (b) It is a defense to prosecution or to imposition of a
24 civil penalty for the violation of a law that:

1 (1) the person requested a written advisory opinion
2 from the commission relating to the application of that law to a
3 specified existing fact situation involving the person that is the
4 same fact situation or substantially similar to the fact situation
5 that forms the basis of the alleged violation; and

6 (2) the commission did not issue the opinion within
7 the time prescribed by Section 571.092.

8 (c) The defense to prosecution or imposition of a civil
9 penalty under Subsection (b) applies only to acts giving rise to a
10 potential violation of law occurring in the period beginning on the
11 date the time prescribed by Section 571.092 expires and ending on
12 the date the commission issues the requested opinion.

13 SECTION 3. Section 571.1212, Government Code, is amended to
14 read as follows:

15 Sec. 571.1212. CATEGORIZATION OF VIOLATIONS. An allegation
16 of a violation listed as a Category One violation shall be treated
17 as a Category Two violation if the executive director at any time
18 determines that:

19 (1) the allegation arises out of the same set of facts
20 as those that give rise to an allegation of a Category Two
21 violation, and the interests of justice or efficiency require
22 resolution of the allegations together; or

23 (2) the facts and law related to a particular
24 allegation or a defense to the allegation present a level of
25 complexity that prevents resolution through the preliminary review
26 procedures for Category One violations prescribed by Section
27 571.1242 [~~571.1242(a)~~].

1 SECTION 4. Subchapter E, Chapter 571, Government Code, is
2 amended by adding Section 571.1223 to read as follows:

3 Sec. 571.1223. DISMISSAL OF COMPLAINT FOLLOWING CORRECTED
4 OR AMENDED STATEMENT, REGISTRATION, OR REPORT. At any stage of a
5 proceeding under this subchapter, the commission shall dismiss a
6 complaint to the extent the complaint alleges a statement,
7 registration, or report violates a law or rule if:

8 (1) the respondent has filed a corrected or amended
9 statement, registration, or report before the commission accepts
10 jurisdiction over the complaint; and

11 (2) the corrected or amended statement, registration,
12 or report remedies the alleged violation.

13 SECTION 5. The heading to Section 571.1241, Government
14 Code, is amended to read as follows:

15 Sec. 571.1241. REVIEW OF EXECUTIVE DIRECTOR'S
16 DETERMINATION OF ~~NO~~ JURISDICTION.

17 SECTION 6. Section 571.1241(a), Government Code, is amended
18 to read as follows:

19 (a) If the executive director determines that the
20 commission does not have jurisdiction over the violation alleged in
21 the complaint, the complainant or respondent may request that the
22 commission review the determination. A request for review under
23 this section must be filed not later than the 30th day after the
24 date the complainant or respondent receives the executive
25 director's determination.

26 SECTION 7. The heading to Section 571.1242, Government
27 Code, is amended to read as follows:

1 Sec. 571.1242. PRELIMINARY REVIEW [~~← RESPONSE BY~~
2 RESPONDENT].

3 SECTION 8. Sections 571.1242(a), (b), and (c), Government
4 Code, are amended to read as follows:

5 (a) If the alleged violation is a Category One violation, ~~[←~~
6 ~~[(1)]~~ the respondent must respond to the notice
7 required by Section 571.123(b) not later than the 10th business day
8 after the date the respondent receives the notice ~~[, and~~

9 ~~[(2) if the matter is not resolved by agreement~~
10 ~~between the commission and the respondent before the 30th business~~
11 ~~day after the date the respondent receives the notice under Section~~
12 ~~571.123(b), the commission shall set the matter for a preliminary~~
13 ~~review hearing to be held at the next commission meeting for which~~
14 ~~notice has not yet been posted].~~

15 (b) If the alleged violation is a Category Two violation, ~~[←~~
16 ~~[(1)]~~ the respondent must respond to the notice
17 required by Section 571.123(b) not later than the 25th business day
18 after the date the respondent receives the notice under Section
19 571.123(b) ~~[, and~~

20 ~~[(2) if the matter is not resolved by agreement~~
21 ~~between the commission and the respondent before the 75th business~~
22 ~~day after the date the respondent receives the notice under Section~~
23 ~~571.123(b), the commission shall set the matter for a preliminary~~
24 ~~review hearing to be held at the next commission meeting for which~~
25 ~~notice has not yet been posted].~~

26 (c) A respondent's failure to timely respond as required by
27 Subsection (a) ~~[(a)(1)]~~ or (b) ~~[(b)(1)]~~ is a Category One

1 violation.

2 SECTION 9. Section 571.1243, Government Code, is
3 redesignated as Section 571.1242(f), Government Code, and amended
4 to read as follows:

5 (f) [~~Sec. 571.1243. PRELIMINARY REVIEW: WRITTEN~~
6 ~~QUESTIONS.~~] During a preliminary review, the commission staff may
7 submit to the complainant or respondent written questions
8 reasonably intended to lead to the discovery of matters relevant to
9 the investigation.

10 SECTION 10. Section 571.1242, Government Code, is amended
11 by adding Subsections (g), (h), (i), and (j) to read as follows:

12 (g) Not later than the 120th day after the later of the date
13 the commission receives a respondent's response to notice as
14 required by Subsection (a) or (b) or the respondent's response to
15 written questions as required by Subsection (f), the commission
16 must:

17 (1) propose an agreement to the respondent to settle
18 the complaint without holding a preliminary hearing; or

19 (2) dismiss the complaint.

20 (h) The deadline under Subsection (g) is tolled for the
21 duration of any litigation brought by the respondent or the
22 commission regarding the complaint at issue.

23 (i) If a respondent rejects a proposed settlement under
24 Subsection (g), the matter must be set for a preliminary review
25 hearing at the next commission meeting for which notice has not yet
26 been posted.

27 (j) If a complaint is dismissed under Subsection (g), the

1 commission shall deny jurisdiction over any subsequent complaint
2 against the respondent that alleges the respondent violated the
3 same statutes or rules based on the same facts alleged in the
4 dismissed complaint.

5 SECTION 11. Section 571.125, Government Code, is amended by
6 adding Subsection (f) to read as follows:

7 (f) Counsel for the respondent may subpoena a witness to a
8 preliminary review hearing in the same manner as an attorney may
9 issue a subpoena in a proceeding in a county or district court.

10 SECTION 12. Section 571.130, Government Code, is amended by
11 adding Subsection (f) to read as follows:

12 (f) Counsel for the respondent may subpoena a witness to a
13 formal hearing in the same manner as an attorney may issue a
14 subpoena in a proceeding in a county or district court.

15 SECTION 13. Section 571.1242(e), Government Code, is
16 repealed.

17 SECTION 14. The changes in law made by this Act to Chapter
18 571, Government Code, apply only to the effect or resolution of a
19 complaint filed under that chapter on or after the effective date of
20 this Act. The effect or resolution of a complaint filed before the
21 effective date of this Act is governed by the law in effect when the
22 complaint was filed, and the former law is continued in effect for
23 that purpose.

24 SECTION 15. This Act takes effect September 1, 2017.