

By: Hancock

S.B. No. 2206

A BILL TO BE ENTITLED

1 AN ACT
2 relating to information required to be disclosed by certain
3 investors of publicly traded companies whose headquarters are
4 located in this state.

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

6 SECTION 1. This Act shall be known as the Bring Business to
7 Texas and Fairness in Disclosure Act.

8 SECTION 2. Section 4, The Securities Act (Article 581-4,
9 Vernon's Texas Civil Statutes), is amended by adding Subsections R,
10 S, T, U, V, W, and X to read as follows:

11 R. "Activist investor" means a person who, directly or
12 indirectly, or through or with an affiliate:

13 (1) nominates or attempts to nominate the person or
14 another person to the governing authority or body of a publicly
15 traded entity, including the board of directors of a corporation or
16 the general partners of a general partnership or limited
17 partnership;

18 (2) makes or attempts to make one or more shareholder
19 proposals or the equivalent for a publicly traded entity; or

20 (3) acts broadly in concert with, or on behalf of, a
21 person who engages in actions described by either Subdivision (1)
22 or (2) of this subsection.

23 S. "Affiliate," with respect to a person, means:

24 (1) a family member of a natural person; or

1 (2) any person who controls, is controlled by, or is
2 under common control with the person.

3 T. "Beneficial owner," with respect to a class of securities
4 of a publicly traded entity, means a person who has the sole or
5 shared power to vote or dispose of a security or who enjoys the
6 economic benefits of ownership of a security. The term includes a
7 person who enjoys the benefits of ownership of a security or the
8 voting power of a security, regardless of whether the security is
9 held in the name of another person.

10 U. "Governing authority" has the meaning assigned by Section
11 1.002, Business Organizations Code.

12 V. "Headquarters," with respect to a publicly traded entity,
13 means the location at which the president or other chief executive
14 officer of the entity, a general partner of the entity, or any other
15 senior member of the entity's management team routinely performs
16 duties in those respective capacities.

17 W. "Mutual fund" means an entity that:

18 (1) is engaging primarily in, or proposes to engage
19 primarily in, the business of investing, reinvesting, or trading in
20 securities;

21 (2) is engaging or proposes to engage in the business
22 of issuing face-amount certificates of the installment type;

23 (3) has engaged in a business described by Subdivision
24 (2) of this subsection and has outstanding a certificate described
25 by that subdivision;

26 (4) is engaging or proposes to engage in the business
27 of investing, reinvesting, owning, holding, or trading in

1 securities and owns or proposes to acquire investment securities
2 whose value exceeds 40 percent of the value of the total assets of
3 the issuer of the securities, not including government securities
4 and cash, on an unconsolidated basis; or

5 (5) is an investment company registered under the
6 Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

7 X. "Texas-based public company" means a publicly traded
8 entity whose headquarters are located in this state.

9 SECTION 3. The Securities Act (Article 581-1 et seq.,
10 Vernon's Texas Civil Statutes) is amended by adding Sections 45,
11 46, 47, and 48 to read as follows:

12 Sec. 45. BENEFICIAL OWNERSHIP; DISCLOSURE. A. This section
13 applies only to a person who is simultaneously:

14 (1) a beneficial owner of a security of any class of
15 securities of a Texas-based public company; and

16 (2) an activist investor with respect to the same
17 Texas-based public company that is beneficially owned by the
18 person.

19 B. Not later than the 10th day after the date the person is or
20 becomes both a beneficial owner and an activist investor of a
21 Texas-based public company or September 11, 2017, whichever is
22 later, the person shall file with the Securities Commissioner and
23 deliver, by United States certified mail, to the company's
24 headquarters and to the company's registered agent designated under
25 Chapter 5, Business Organizations Code, a certified statement that:

26 (1) contains:

27 (A) the full name, identity, background,

1 residence, primary telephone number, and citizenship of the person;

2 (B) the address of the principal place of
3 business of the person and the person's primary e-mail address;

4 (C) the nature of the beneficial ownership of the
5 person; and

6 (D) for all other persons by whom or on whose
7 behalf the beneficial ownership of the person has been or is to be
8 effected, the information described by Paragraphs (A) and (B) of
9 this subdivision; and

10 (2) is signed by the senior executive officer of the
11 person certifying that the information disclosed in Subdivision (1)
12 of this subsection is correct and complete.

13 Sec. 46. CHANGE TO CERTAIN DISCLOSED INFORMATION;
14 AMENDMENT. If, during the time a person described by Section 45A of
15 this Act is an activist investor of the Texas-based public company,
16 any change occurs in the information contained in the certified
17 statement the person filed under Section 45 of this Act, the person
18 shall:

19 (1) file an amendment to the certified statement with
20 the Securities Commissioner not later than the 10th day after the
21 date the change occurs; and

22 (2) deliver, by United States certified mail, a
23 correct and complete copy of the amendment to the security issuer's
24 headquarters in this state.

25 Sec. 47. ACTIONS TO AVOID MAKING CERTAIN REQUIRED
26 DISCLOSURES PROHIBITED. A. This section does not apply to a mutual
27 fund.

1 B. A person may not act at the direction of, for the benefit
2 of, or otherwise on behalf of another person with the intent or
3 effect of avoiding a disclosure required by Section 45 of this Act.

4 C. If the board of directors or other governing authority of
5 a corporation, limited liability company, partnership, or other
6 Texas-based public company reasonably believes that one or more
7 persons are acting in concert with, at the direction of, or on
8 behalf of another person with the intent or effect of avoiding a
9 disclosure required by Section 45 of this Act, the governing
10 authority of the company shall notify the Securities Commissioner
11 of that conduct.

12 D. If the Securities Commissioner determines that a person
13 is violating Subsection B of this section, the Securities
14 Commissioner shall require the person to disclose the information
15 required by Section 45 of this Act.

16 Sec. 48. PRIVATE CAUSE OF ACTION. A. A Texas-based public
17 company entitled to receive a disclosure under Section 45 of this
18 Act or a person acting on behalf of the company may bring an action,
19 on an expedited basis, in a court in this state against a person
20 that does not comply with the disclosure required by that section
21 for:

22
23 (1) injunctive relief; and
24 (2) recovery of the company's reasonable attorney's
25 fees.

26 B. A civil penalty or remedy in addition to the injunctive
27 relief provided by Subsection A of this section may not be imposed

1 or awarded against a person for a violation that arises out of the
2 same conduct described by that subsection.

3 SECTION 4. This Act takes effect September 1, 2017.