By:  Flynn (Senate Sponsor - Hughes) H.B. No. 2820

(In the Senate - Received from the House April 11, 2019; April 15, 2019, read first time and referred to Committee on State Affairs; April 29, 2019, reported favorably by the following vote: Yeas 8, Nays 0; April 29, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton                 X

Fallon          X

Hall            X

Lucio           X

Nelson          X

Zaffirini       X

A BILL TO BE ENTITLED

AN ACT

relating to the registration and certification of certain investment products made available to public school employees.

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

ARTICLE 1. ELIGIBLE QUALIFIED INVESTMENTS

SECTION 1.01.  Section 4, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.  In this section and in Sections 5, 6, [~~7, 8, 8A,~~] 9, 9A, 9B, 10, 11, and 12[~~, and 13~~] of this Act:

(1)  [~~"Board of trustees" means the board of trustees of the Teacher Retirement System of Texas.~~

[~~(2)~~]  "Educational institution" means a school district or an open-enrollment charter school.

(2) [~~(3)~~]  "Eligible qualified investment" means a qualified investment product offered by a company that[~~:~~

[~~(A)~~]  is eligible to offer the product [~~certified to the board of trustees~~] under Section 6 [~~5~~] of this Act[~~; or~~

[~~(B)  is eligible to certify to the board of trustees under Section 8 of this Act~~].

(3) [~~(4)~~]  "Employee" means an employee of an educational institution.

(4) [~~(5)~~]  "Qualified investment product" means an annuity or investment that:

(A)  meets the requirements of Section 403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B)  complies with applicable federal insurance and securities laws and regulations; and

(C)  complies with applicable state insurance and securities laws and rules.

(5)  [~~(6)  "Retirement system" means the Teacher Retirement System of Texas.~~

[~~(7)~~]  "Salary reduction agreement" means an agreement between an educational institution and an employee to reduce the employee's salary for the purpose of making direct contributions to or purchases of a qualified investment product.

SECTION 1.02.  Sections 5(a) and (f), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), are amended to read as follows:

(a)  An educational institution may enter into a salary reduction agreement with an employee of the institution only if the qualified investment product [~~:~~

[~~(1)~~]  is an eligible qualified investment[~~; and~~

[~~(2)  is registered with the retirement system under Section 8A of this Act~~].

(f)  To the greatest degree possible, educational institutions that enter into a salary reduction agreement with [~~employers of~~] employees [~~who participate in the program offered~~] under this section shall require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts.

SECTION 1.03.  Sections 6(a) and (b), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), are amended to read as follows:

(a)  An insurance [~~A~~] company is eligible to offer qualified investment products to the employees of educational institutions under [~~certify to the retirement system under Section 5 of~~] this Act if the company satisfies the following [~~financial strength~~] criteria:

(1)  the company is licensed by the Texas Department of Insurance and is in compliance with minimum capital and surplus requirements, including applicable risk-based capital and surplus requirements prescribed by rules adopted by the department [~~company's actuarial opinions required under Articles 1.11 and 3.28, Insurance Code, have not been adverse or qualified in the five years preceding the date the application is filed;~~

[~~(2) the company is subject to the annual audit requirements of Article 1.15A, Insurance Code, and its most recent audit of financial strength conducted by an independent certified public accountant is timely filed and does not indicate the existence of any material adverse financial conditions in the company for the five years preceding the filing deadline for the audit;~~

[~~(3) the company has not been the subject of an administrative or regulatory action by the Texas Department of Insurance under Article 1.32 or 21.28-A or Section 83.051, Insurance Code, in the five years preceding the date the application is filed;~~

[~~(4) the company has maintained during the five years preceding the date the application is filed an average of at least 400 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus requirements established in rules adopted by the Texas Department of Insurance;~~

[~~(5) the company has not fallen below 300 percent of the authorized control level, as calculated in accordance with the risk-based capital and surplus established in rules adopted by the Texas Department of Insurance, at any time in the five years preceding the date the application is filed~~]; and

(2) [~~(6)~~]  the company has [~~at least five years'~~] experience in providing qualified investment products and has a specialized department dedicated to the service of qualified investment products, as determined by the educational institution.

(b)  A company that offers qualified investment products other than annuity contracts, including a company that offers custodial accounts under Section 403(b)(7), Internal Revenue Code of 1986, is eligible to offer qualified investment products to employees of educational institutions under this Act [~~For purposes of Subsection (a)(4) of this section, the company must calculate the five-year average on the same date each year~~].

SECTION 1.04.  Section 9(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a)  An educational institution may not:

(1)  except as provided by Subdivision (8) of this subsection and Subsection (b) of this section, refuse to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction is an eligible qualified investment [~~and is registered with the system under Section 8A~~];

(2)  require or coerce an employee's attendance at any meeting at which qualified investment products are marketed;

(3)  limit the ability of an employee to initiate, change, or terminate a qualified investment product at any time the employee chooses;

(4)  grant exclusive access to an employee by discriminating against or imposing barriers to any agent, broker, or company that provides qualified investment products under this Act;

(5)  grant exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to a company or agent or affiliate of a company offering qualified investment products unless the employee consents in writing to the access;

(6)  accept any benefit from a company or from an agent or affiliate of a company that offers qualified investment products;

(7)  use public funds to recommend a qualified investment product offered by a company or an agent or affiliate of a company that offers a qualified investment product; or

(8)  enter into or continue a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment[~~, including the investment product of a company whose certification has been denied, suspended, or revoked~~] without first providing the employee with notice in writing that:

(A)  indicates the reason the subject of the salary reduction agreement is no longer an eligible qualified investment [~~or why certification has been denied, suspended, or revoked~~]; and

(B)  clearly states that by signing the notice the employee is agreeing to enter into or continue the salary reduction agreement.

SECTION 1.05.  Section 9A, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9A.  A person, other than an employee of an educational institution, or an affiliate of the person may not enter into or renew a contract under which the person is to provide services for or administer a plan offered by the institution under Section 403(b), Internal Revenue Code of 1986, unless the person:

(1)  holds a license or certificate of authority issued by the Texas Department of Insurance;

(2)  is registered as a securities dealer or agent or investment advisor with the State Securities Board; or

(3)  is a financial institution that:

(A)  is authorized by state or federal law to exercise fiduciary powers; and

(B)  has sufficient presence [~~its main office, a branch office, or a trust office~~] in this state to serve the employees of educational institutions who participate in the plan.

SECTION 1.06.  Section 9B(b), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(b)  If a person described by Subsection (a) holds a meeting at which qualified investment products will be marketed to employees of the educational institution, the person must provide representatives of other companies eligible to sell qualified investment products under Section 6 [~~certified to the retirement system under Section 5 or 8~~] of this Act an opportunity to attend and market their qualified investment products at the meeting.

SECTION 1.07.  Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a)  A person commits an offense if the person:

(1)  sells or offers for sale an investment product that is not an eligible qualified investment [~~or that is not registered under Section 8A of this Act~~] and that the person knows will be the subject of a salary reduction agreement;

(2)  violates the licensing requirements of Title 13, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement; or

(3)  engages in activity described by Subchapter B, Chapter 541, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement.

SECTION 1.08.  Section 11(c), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(c)  The notice required under this section must be uniform and:

(1)  be in at least 14-point type;

(2)  contain spaces for:

(A)  the name, address, and telephone number of the agent and company offering the annuity contract for sale;

(B)  the name, address, and telephone number of the company underwriting the annuity;

(C)  the license number of the person offering to sell the product;

(D)  the name of the state agency that issued the person's license;

(E)  the name of the company account representative who has the authority to respond to inquiries or complaints; and

(F)  with respect to fixed annuity products:

(i)  the current interest rate or the formula used to calculate the current rate of interest;

(ii)  the guaranteed rate of interest and the percentage of the premium to which the interest rate applies;

(iii)  how interest is compounded;

(iv)  the amount of any up-front, surrender, withdrawal, deferred sales, and market value adjustment charges or any other contract restriction that exceeds 10 years;

(v)  the time, if any, the annuity is required to be in force before the purchaser is entitled to the full bonus accumulation value;

(vi)  the manner in which the amount of the guaranteed benefit under the annuity is computed;

(vii)  whether loans are guaranteed to be available under the annuity;

(viii)  what restrictions, if any, apply to the availability of money attributable to the value of the annuity once the purchaser is retired or separated from the employment of the employer;

(ix)  the amount of any other fees, costs, or penalties;

(x)  whether the annuity guarantees the participant the right to surrender a percentage of the surrender value each year, and the percentage, if any; and

(xi)  whether the annuity guarantees the interest rate associated with any settlement option; and

(3)  state, in plain language:

(A)  that the company offering the annuity must comply with Section 6 [~~5~~] of this Act and that the annuity must be a qualified investment product [~~registered under Section 8A of this Act~~];

(B)  [~~that the potential purchaser may contact the retirement system or access its Internet website to determine which companies are in compliance with Section 5 of this Act and which qualified investment products are registered under Section 8A of this Act;~~

[~~(C)~~] the civil remedies available to the employee;

(C) [~~(D)~~]  that the employee may purchase any eligible qualified investment through a salary reduction agreement;

(D) [~~(E)~~]  the name and telephone number of the Texas Department of Insurance division that specializes in consumer protection; and

(E) [~~(F)~~]  the name and telephone number of the attorney general's division that specializes in consumer protection.

SECTION 1.09.  Section 12, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12.  A company that offers an eligible qualified investment that is subject to a salary reduction agreement shall require [~~demonstrate annually to the retirement system~~] that each of its representatives are properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investments.

SECTION 1.10.  The following laws are repealed:

(1)  Sections 5(b), (c), (d), and (e), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(2)  Sections 6(c), (d), (d-1), (d-2), (e), (f), (f-1), (g), (h), and (i), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(3)  Section 7, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(4)  Section 8, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(5)  Section 8A, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(6)  Section 11(b), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes); and

(7)  Section 13, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes).

ARTICLE 2. CONFORMING CHANGE

SECTION 2.01.  Section 17.46(b), Business & Commerce Code, as amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(b)  Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1)  passing off goods or services as those of another;

(2)  causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3)  causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4)  using deceptive representations or designations of geographic origin in connection with goods or services;

(5)  representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not;

(6)  representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7)  representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8)  disparaging the goods, services, or business of another by false or misleading representation of facts;

(9)  advertising goods or services with intent not to sell them as advertised;

(10)  advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11)  making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12)  representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13)  knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14)  misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15)  basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16)  disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17)  advertising of any sale by fraudulently representing that a person is going out of business;

(18)  advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A)  the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B)  the seller does not represent that the card provides insurance coverage of any kind; and

(C)  the discount is not false, misleading, or deceptive;

(19)  using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(20)  representing that a guaranty or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

(21)  promoting a pyramid promotional scheme, as defined by Section 17.461;

(22)  representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(23)  filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit that the person neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(24)  failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(25)  using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction;

(26)  selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act [~~or is not registered with the Teacher Retirement System of Texas as required by Section 8A of that Act~~];

(27)  taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A)  selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B)  demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity;

(28)  using the translation into a foreign language of a title or other word, including "attorney," "immigration consultant," "immigration expert," "lawyer," "licensed," "notary," and "notary public," in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States;

(29)  delivering or distributing a solicitation in connection with a good or service that:

(A)  represents that the solicitation is sent on behalf of a governmental entity when it is not; or

(B)  resembles a governmental notice or form that represents or implies that a criminal penalty may be imposed if the recipient does not remit payment for the good or service;

(30)  delivering or distributing a solicitation in connection with a good or service that resembles a check or other negotiable instrument or invoice, unless the portion of the solicitation that resembles a check or other negotiable instrument or invoice includes the following notice, clearly and conspicuously printed in at least 18-point type:

"SPECIMEN-NON-NEGOTIABLE";

(31)  in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:

(A)  making a deceptive representation or designation about the synthetic substance; or

(B)  causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested;

(32)  a licensed public insurance adjuster directly or indirectly soliciting employment, as defined by Section 38.01, Penal Code, for an attorney, or a licensed public insurance adjuster entering into a contract with an insured for the primary purpose of referring the insured to an attorney without the intent to actually perform the services customarily provided by a licensed public insurance adjuster, provided that this subdivision may not be construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured; [~~or~~]

(33)  owning, operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations Code, that:

(A)  is not appropriately licensed under Chapter 455, Occupations Code, or is not in compliance with the applicable licensing and other requirements of that chapter; or

(B)  is not in compliance with an applicable local ordinance relating to the licensing or regulation of massage establishments; or

(34) [~~(33)~~]  a warrantor of a vehicle protection product warranty using, in connection with the product, a name that includes "casualty," "surety," "insurance," "mutual," or any other word descriptive of an insurance business, including property or casualty insurance, or a surety business.

ARTICLE 3. TRANSITIONS; CONFLICT WITH OTHER LEGISLATION; EFFECTIVE DATE

SECTION 3.01.  The changes in law made by this Act to Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), apply only to an offer of a qualified investment product under that Act that is made on or after the effective date of this Act. An offer of a qualified investment product that is made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.02.  The change in law made by this Act to Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3.03.  Section 17.46(b), Business & Commerce Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.04.  To the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.05.  This Act takes effect September 1, 2019.

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