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H.B. No. 1535

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the continuation and functions of the State Securities  
3 Board.

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

5 SECTION 1. Subsections J and O, Section 2, The Securities  
6 Act (Article 581-2, Vernon's Texas Civil Statutes), are amended to  
7 read as follows:

8 J. On or before January 1 of each year, the Board, with the  
9 advice of the Commissioner, shall report to the Governor and the  
10 presiding officer of each house of the Legislature as to its  
11 administration of this Act, as well as plans and needs for future  
12 securities regulation. The report must include:

13 (1) a detailed accounting of all funds received and  
14 disbursed by the Board during the preceding year, including the  
15 amount spent by the Board assisting in the criminal prosecution of  
16 cases under Subsection B of Section 3 of this Act; and

17 (2) with respect to cases referred during the  
18 preceding year by the Board under Subsection A of Section 3 of this  
19 Act, a breakdown by county and district attorney of the number of  
20 cases where:

21 (A) criminal charges were filed;

22 (B) prosecution is ongoing; or

23 (C) prosecution was completed.

24 O. The State Securities Board is subject to Chapter 325,

1 Government Code (Texas Sunset Act). Unless continued in existence  
2 as provided by that chapter, the board is abolished and this Act  
3 expires September 1, 2031 [~~2019~~].

4 SECTION 2. Section 2-3, The Securities Act (Article  
5 581-2-3, Vernon's Texas Civil Statutes), is amended by amending  
6 Subsection B and adding Subsection D to read as follows:

7 B. The training program must provide the person with  
8 information regarding:

9 (1) the law governing [~~legislation that created the~~  
10 Board operations];

11 (2) the programs, [~~operated by the Board,~~  
12 [~~(3) the role and~~] functions, rules, and budget of the  
13 Board;

14 (3) the scope of and limitations on the rulemaking  
15 authority [~~(4) the rules~~] of the Board [~~with an emphasis on the~~  
16 ~~rules that relate to disciplinary and investigatory authority~~];

17 (4) the types of Board rules, interpretations, and  
18 enforcement actions that may implicate federal antitrust law by  
19 limiting competition or impacting prices charged by persons engaged  
20 in a profession or business the Board regulates, including rules,  
21 interpretations, and enforcement actions that:

22 (A) regulate the scope of practice of persons in  
23 a profession or business that the Board regulates;

24 (B) restrict advertising by persons in a  
25 profession or business the Board regulates;

26 (C) affect the price of goods or services  
27 provided by persons in a profession or business the Board

1 regulates; or

2 (D) restrict participation in a profession or  
3 business the Board regulates;

4 (5) ~~[the current budget for the Board;~~  
5 ~~(6)]~~ the results of the most recent formal audit of  
6 the Board;

7 (6) ~~(7)]~~ the requirements of:

8 (A) laws relating to ~~[the]~~ open meetings, ~~[law,~~  
9 ~~Chapter 551, Government Code;~~

10 ~~[(B) the]~~ public information ~~[law], [Chapter~~  
11 ~~552, Government Code;~~

12 ~~[(C) the]~~ administrative procedure ~~[law],~~  
13 ~~[Chapter 2001, Government Code;]~~ and disclosing conflicts of  
14 interest; and

15 (B) ~~(D)]~~ other laws applicable ~~[relating]~~ to  
16 members of a state policy-making body in performing their duties  
17 ~~[public officials, including conflict-of-interest laws]; and~~

18 (7) ~~(8)]~~ any applicable ethics policies adopted by  
19 the Board or the Texas Ethics Commission.

20 D. The Commissioner shall create a training manual that  
21 includes the information required by Subsection B of this section.  
22 The Commissioner shall distribute a copy of the training manual  
23 annually to each member of the Board. Each member of the Board  
24 shall sign and submit to the Commissioner a statement acknowledging  
25 that the member received and has reviewed the training manual.

26 SECTION 3. Section 2-6, The Securities Act (Article  
27 581-2-6, Vernon's Texas Civil Statutes), is amended to read as

1 follows:

2 Art. 581-2-6. COMPLAINTS INFORMATION. A. The

3 Commissioner or the Commissioner's designee shall maintain a system  
4 to promptly and efficiently act [file] on complaints [each written  
5 complaint] filed with the Commissioner or Board. The Commissioner  
6 or the Commissioner's designee shall maintain information about  
7 parties to the complaint, the subject matter of the complaint, a  
8 summary of the results of the review or investigation of the  
9 complaint, and its disposition [concerning an employee, former  
10 employee, or person registered under this Act. The file must  
11 include:

12 [~~(1) the name of the person who filed the complaint,~~

13 [~~(2) the date the complaint is received by the~~

14 ~~Commissioner or Board,~~

15 [~~(3) the subject matter of the complaint,~~

16 [~~(4) the name of each person contacted in relation to~~

17 ~~the complaint,~~

18 [~~(5) a summary of the results of the review or~~

19 ~~investigation of the complaint, and~~

20 [~~(6) an explanation of the reason the file was closed,~~

21 ~~if the Commissioner closed the file without taking action other~~  
22 ~~than to investigate the complaint].~~

23 B. The Commissioner or the Commissioner's designee shall  
24 make information available describing [provide to the person filing  
25 the complaint and to each person who is a subject of the complaint a  
26 copy of] the Board's [~~policies and~~] procedures for [relating to]  
27 complaint investigation and resolution.

1 C. The Commissioner or the Commissioner's designee [~~at~~  
2 ~~least quarterly until final disposition of the complaint,~~] shall  
3 periodically notify the [~~person filing the~~] complaint parties [~~and~~  
4 ~~each person who is a subject of the complaint~~] of the status of the  
5 complaint until final disposition [~~investigation~~] unless the  
6 notice would jeopardize a law enforcement [~~an undercover~~]  
7 investigation.

8 SECTION 4. The Securities Act (Article [581-1](#) et seq.,  
9 Vernon's Texas Civil Statutes) is amended by adding Section 2-8 to  
10 read as follows:

11 Sec. 2-8. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.

12 A. The Board shall develop a policy to encourage the use of:

13 (1) negotiated rulemaking procedures under Chapter  
14 [2008](#), Government Code, for the adoption of Board rules; and

15 (2) appropriate alternative dispute resolution  
16 procedures under Chapter [2009](#), Government Code, to assist in the  
17 resolution of internal and external disputes under the Board's  
18 jurisdiction.

19 B. The Board's procedures relating to alternative dispute  
20 resolution must conform, to the extent possible, to any model  
21 guidelines issued by the State Office of Administrative Hearings  
22 for the use of alternative dispute resolution by state agencies.

23 C. The Board shall:

24 (1) coordinate the implementation of the policy  
25 adopted under Subsection A of this section;

26 (2) provide training as needed to implement the  
27 procedures for negotiated rulemaking or alternative dispute

1 resolution; and

2 (3) collect data concerning the effectiveness of those  
3 procedures.

4 SECTION 5. Section 3, The Securities Act (Article 581-3,  
5 Vernon's Texas Civil Statutes), is amended to read as follows:

6 Art. 581-3. ADMINISTRATION AND ENFORCEMENT BY THE  
7 SECURITIES COMMISSIONER AND THE ATTORNEY GENERAL AND LOCAL LAW  
8 ENFORCEMENT OFFICIALS. A. The administration of the provisions of  
9 this Act shall be vested in the Securities Commissioner. It shall  
10 be the duty of the Securities Commissioner and the Attorney General  
11 to see that its provisions are at all times obeyed and to take such  
12 measures and to make such investigations as will prevent or detect  
13 the violation of any provision thereof. The Commissioner shall at  
14 once lay before the District or County Attorney of the proper county  
15 any evidence which shall come to his knowledge of criminality under  
16 this Act. In the event of the neglect or refusal of such attorney to  
17 institute and prosecute such violation, the Commissioner shall  
18 submit such evidence to the Attorney General, who is hereby  
19 authorized to proceed therein with all the rights, privileges and  
20 powers conferred by law upon district or county attorneys,  
21 including the power to appear before grand juries and to  
22 interrogate witnesses before such grand juries.

23 B. Subject to Subsection E of this section, the Board may  
24 provide assistance to a county or district attorney who requests  
25 assistance in a criminal prosecution involving an alleged violation  
26 of this Act that is referred by the Board to the attorney under  
27 Subsection A of this section.

1       C. Before referring a case to a county or district attorney  
2 for prosecution as required by Subsection A of this section, the  
3 Commissioner shall make a determination of:

4           (1) the potential resources of the Board, including  
5 the number and types of Board employees, that would be needed to  
6 assist in the prosecution of the case; and

7           (2) the availability of Board employees and other  
8 resources necessary to carry out any request for assistance.

9       D. The Board by rule shall establish a process to enable the  
10 Commissioner to determine whether to provide any requested  
11 assistance to the appropriate prosecuting attorney following  
12 referral of a case under Subsection A of this section, and, if so,  
13 the appropriate amount of such assistance. The rules must require  
14 the Commissioner to consider:

15           (1) whether resources are available after taking into  
16 account any ongoing Board investigations, investigations under  
17 Section 28 of this Act, and criminal prosecutions for which  
18 assistance is being provided;

19           (2) the seriousness of the alleged violation or  
20 violations in the case, including the severity of the harm and  
21 number of victims involved; and

22           (3) the state's interest in the prosecution of a  
23 particular case and the availability of other methods of redress  
24 for the alleged violations, including the pursuit of a civil  
25 action.

26       E. In response to a request for assistance under Subsection  
27 B of this section, the Board may provide only those Board employees

1 or resources, if any, determined to be available for that case in  
2 accordance with Subsection C of this section. If a change in  
3 circumstances occurs after the time of the determination under  
4 Subsection C of this section, the Commissioner may reconsider the  
5 Commissioner's determination under that subsection and may  
6 increase or reduce the number of Board employees or other resources  
7 to be made available for a case using the process established under  
8 Subsection D of this section.

9 F. The Attorney General, at least biennially, shall review a  
10 sample of criminal cases for which the Board provided requested  
11 assistance to county or district attorneys under this section. The  
12 review must include an evaluation of the pre-referral determination  
13 of available resources to support each case being reviewed as  
14 required by Subsection C of this section and any subsequent  
15 determination of those resources made by the Commissioner as  
16 authorized under Subsection E of this section. The Attorney  
17 General may report any concerns the Attorney General has in  
18 connection with the Board's provision of assistance to the standing  
19 committee of each house of the legislature with primary  
20 jurisdiction over Board matters.

21 SECTION 6. The Securities Act (Article 581-1 et seq.,  
22 Vernon's Texas Civil Statutes) is amended by adding Section 32-1 to  
23 read as follows:

24 Sec. 32-1. REFUND. A. Subject to Subsection B of this  
25 section, the Commissioner may order a dealer, agent, investment  
26 adviser, or investment adviser representative regulated under this  
27 Act to pay a refund to a client or a purchaser of securities or



1 services from the person or company as provided in an agreed order  
2 or an enforcement order instead of or in addition to imposing an  
3 administrative penalty or other sanctions.

4 B. The amount of a refund ordered as provided in an agreed  
5 order or an enforcement order may not exceed the amount the client  
6 or purchaser paid to the dealer, agent, investment adviser, or  
7 investment adviser representative for a service or transaction  
8 regulated by the Board. The Commissioner may not require payment of  
9 other damages or estimate harm in a refund order.

10 SECTION 7. Subsection B, Section 35, The Securities Act  
11 (Article 581-35, Vernon's Texas Civil Statutes), is amended to read  
12 as follows:

13 B. The Commissioner or Board shall charge and collect the  
14 following fees and shall daily pay all fees received into the State  
15 Treasury:

16 (1) for any filing to amend the registration  
17 certificate of a dealer or investment adviser or evidence of  
18 registration of an agent or investment adviser representative, or  
19 issue a duplicate certificate or evidence of registration, [~~or~~  
20 ~~register a branch office,~~] \$25;

21 (2) for the examination of any original or amended  
22 application filed under Subsection A, B, or C of Section 7 of this  
23 Act, regardless of whether the application is denied, abandoned,  
24 withdrawn, or approved, a fee of one-tenth (1/10) of one percent  
25 (1%) of the aggregate amount of securities described and proposed  
26 to be sold to persons located within this state based upon the price  
27 at which such securities are to be offered to the public;

1           (3) for certified copies of any papers filed in the  
2 office of the Commissioner, the Commissioner shall charge such fees  
3 as are reasonably related to costs; however, in no event shall such  
4 fees be more than those which the Secretary of State is authorized  
5 to charge in similar cases;

6           (4) for the filing of any application for approval of a  
7 stock exchange so that securities fully listed thereon will be  
8 exempt, a fee of \$10,000;

9           (5) for the filing of a request to take the Texas  
10 Securities Law Examination, \$35;

11           (6) for the filing of an initial notice required by the  
12 Commissioner to claim a secondary trading exemption, a fee of \$500,  
13 and for the filing of a secondary trading exemption renewal notice,  
14 a fee of \$500;

15           (7) for the filing of an initial notice required by the  
16 Commissioner to claim a limited offering exemption, a fee of  
17 one-tenth (1/10) of one percent (1%) of the aggregate amount of  
18 securities described as being offered for sale, but in no case more  
19 than \$500; and

20           (8) for an interpretation by the Board's general  
21 counsel of this Act or a rule adopted under this Act, a fee of \$100,  
22 except that an officer or employee of a governmental entity and the  
23 entity that the officer or employee represents are exempt from the  
24 fee under this subsection when the officer or employee is  
25 conducting official business of the entity.

26           SECTION 8. (a) Except as provided by Subsection (b) of this  
27 section, Section 2-3, The Securities Act (Article [581-2-3](#), Vernon's

1 Texas Civil Statutes), as amended by this Act, applies to a member  
2 of the State Securities Board appointed before, on, or after the  
3 effective date of this Act.

4 (b) A member of the State Securities Board who, before the  
5 effective date of this Act, completed the training program required  
6 by Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas  
7 Civil Statutes), as that law existed before the effective date of  
8 this Act, is required to complete additional training only on  
9 subjects added by this Act to the training program as required by  
10 Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas  
11 Civil Statutes), as amended by this Act. A board member described  
12 by this subsection may not vote, deliberate, or be counted as a  
13 member in attendance at a meeting of the board held on or after  
14 December 1, 2019, until the member completes the additional  
15 training.

16 SECTION 9. Subsection A, Section 2-6, The Securities Act,  
17 (Article 581-2-6, Vernon's Texas Civil Statutes), as amended by  
18 this Act, applies only to a complaint filed with the State  
19 Securities Board on or after the effective date of this Act. A  
20 complaint filed before the effective date of this Act is governed by  
21 the law in effect on the date the complaint was filed, and the  
22 former law is continued in effect for that purpose.

23 SECTION 10. Not later than March 1, 2020, the State  
24 Securities Board shall adopt rules necessary to implement the  
25 changes in law made by this Act to Section 3, The Securities Act  
26 (Article 581-3, Vernon's Texas Civil Statutes).

27 SECTION 11. The change in law made by this Act to Section

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1 35, The Securities Act (Article 581-35, Vernon's Texas Civil  
2 Statutes), does not entitle a person to a refund of a registration  
3 or other fee paid by the person before the effective date of this  
4 Act.

5 SECTION 12. This Act takes effect September 1, 2019.