

By: Nichols, et al.

S.B. No. 622

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the State Securities Board.

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

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

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

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

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

(A) criminal charges were filed;

(B) prosecution is ongoing; or

(C) prosecution was completed.

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 an undercover investigation.

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

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

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

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

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

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

22 C. The Board shall:

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

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

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

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

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

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

27 C. Before referring a case to a county or district attorney

1 for prosecution as required by Subsection A of this section, the
2 Commissioner shall make a determination of:

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

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

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

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

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

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

25 E. In response to a request for assistance under Subsection
26 B of this section, the Board may provide only those Board employees
27 or resources, if any, determined to be available for that case in

1 accordance with Subsection C of this section.

2 F. The Attorney General, at least biennially, shall review a
3 sample of criminal cases for which the Board provided requested
4 assistance to county or district attorneys under this section. The
5 review must include an evaluation of the pre-referral determination
6 of available resources to support each case being reviewed as
7 required by Subsection C of this section. The Attorney General may
8 report any concerns the Attorney General has in connection with the
9 Board's provision of assistance to the standing committee of each
10 house of the legislature with primary jurisdiction over Board
11 matters.

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

15 Sec. 32-1. REFUND. A. Subject to Subsection B of this
16 section, the Commissioner may order a dealer, agent, investment
17 adviser, or investment adviser representative regulated under this
18 Act to pay a refund to a client or a purchaser of securities or
19 services from the person or company as provided in an agreed order
20 or an enforcement order instead of or in addition to imposing an
21 administrative penalty or other sanctions.

22 B. The amount of a refund ordered as provided in an agreed
23 order or an enforcement order may not exceed the amount the client
24 or purchaser paid to the dealer, agent, investment adviser, or
25 investment adviser representative for a service or transaction
26 regulated by the Board. The Commissioner may not require payment of
27 other damages or estimate harm in a refund order.

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

4 B. The Commissioner or Board shall charge and collect the
5 following fees and shall daily pay all fees received into the State
6 Treasury:

7 (1) for any filing to amend the registration
8 certificate of a dealer or investment adviser or evidence of
9 registration of an agent or investment adviser representative, or
10 issue a duplicate certificate or evidence of registration, [~~or~~
11 ~~register a branch office,~~] \$25;

12 (2) for the examination of any original or amended
13 application filed under Subsection A, B, or C of Section 7 of this
14 Act, regardless of whether the application is denied, abandoned,
15 withdrawn, or approved, a fee of one-tenth (1/10) of one percent
16 (1%) of the aggregate amount of securities described and proposed
17 to be sold to persons located within this state based upon the price
18 at which such securities are to be offered to the public;

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

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

27 (5) for the filing of a request to take the Texas

1 Securities Law Examination, \$35;

2 (6) for the filing of an initial notice required by the
3 Commissioner to claim a secondary trading exemption, a fee of \$500,
4 and for the filing of a secondary trading exemption renewal notice,
5 a fee of \$500;

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

11 (8) for an interpretation by the Board's general
12 counsel of this Act or a rule adopted under this Act, a fee of \$100,
13 except that an officer or employee of a governmental entity and the
14 entity that the officer or employee represents are exempt from the
15 fee under this subsection when the officer or employee is
16 conducting official business of the entity.

17 SECTION 8. (a) Except as provided by Subsection (b) of this
18 section, Section 2-3, The Securities Act (Article [581-2-3](#), Vernon's
19 Texas Civil Statutes), as amended by this Act, applies to a member
20 of the State Securities Board appointed before, on, or after the
21 effective date of this Act.

22 (b) A member of the State Securities Board who, before the
23 effective date of this Act, completed the training program required
24 by Section 2-3, The Securities Act (Article [581-2-3](#), Vernon's Texas
25 Civil Statutes), as that law existed before the effective date of
26 this Act, is required to complete additional training only on
27 subjects added by this Act to the training program as required by

1 Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas
2 Civil Statutes), as amended by this Act. A board member described
3 by this subsection may not vote, deliberate, or be counted as a
4 member in attendance at a meeting of the board held on or after
5 December 1, 2019, until the member completes the additional
6 training.

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

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

18 SECTION 11. The change in law made by this Act to Section
19 35, The Securities Act (Article 581-35, Vernon's Texas Civil
20 Statutes), does not entitle a person to a refund of a registration
21 or other fee paid by the person before the effective date of this
22 Act.

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