

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

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

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

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

(2) the programs, [~~operated by the Board,~~

(3) the role and] functions, rules, and budget of the Board;

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

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

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

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

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

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

(5) [the current budget for the Board,

(6)] the results of the most recent formal audit of the Board;

(6) [the] the requirements of:

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

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

(C) the] administrative procedure [~~law~~],

~~[Chapter 2001, Government Code,]~~ and disclosing conflicts of interest; and

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

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

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

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

Art. 581-2-6. COMPLAINTS INFORMATION. A. The Commissioner or the Commissioner's designee shall maintain a system to promptly and efficiently act ~~[file]~~ on complaints ~~[each written complaint]~~ filed with the Commissioner or Board. The Commissioner or the Commissioner's designee shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition ~~[concerning an employee, former employee, or person registered under this Act. The file must include:~~

~~[(1)] the name of the person who filed the complaint,~~  
~~[(2)] -- the date the complaint is received by the Commissioner or Board,~~  
~~[(3)] the subject matter of the complaint,~~  
~~[(4)] -- the name of each person contacted in relation to the complaint,~~  
~~[(5)] -- a summary of the results of the review or investigation of the complaint; and~~  
~~[(6)] -- an explanation of the reason the file was closed, if the Commissioner closed the file without taking action other than to investigate the complaint].~~

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

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

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

Sec. 2-8. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.  
A. The Board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of Board rules; and  
(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

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

C. The Board shall:  
(1) coordinate the implementation of the policy adopted under Subsection A of this section;  
(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32-1. REFUND. A. Subject to Subsection B of this

section, the Commissioner may order a dealer, agent, investment adviser, or investment adviser representative regulated under this Act to pay a refund to a client or a purchaser of securities or services from the person or company as provided in an agreed order or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

(b) A member of the State Securities Board who, before the effective date of this Act, completed the training program required by Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas Civil Statutes), as that law existed before the effective date of this Act, is required to complete additional training only on subjects added by this Act to the training program as required by Section 2-3, The Securities Act (Article 581-2-3, Vernon's Texas Civil Statutes), as amended by this Act. A board member described by this subsection may not vote, deliberate, or be counted as a

member in attendance at a meeting of the board held on or after December 1, 2019, until the member completes the additional training.

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

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

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

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