

2003 Tex. Sess. Law Serv. Ch. 108 (S.B. 1060) (VERNON'S)

VERNON'S TEXAS SESSION LAW SERVICE 2003
Seventy-Eighth Legislature, 2003 Regular Session

Additions are indicated by **Text**; deletions by
~~Text~~ . Changes in tables are made but not highlighted.

CHAPTER 108

S.B. No. 1060

ENFORCEMENT OF CONDUCT AND OTHER MATTERS CONCERNING A SECURITY; PROVIDING A PENALTY

AN ACT relating to enforcement of conduct and other matters concerning a security; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection A, Section 4, The Securities Act (Article 581–4, Vernon's Texas Civil Statutes), is amended to read as follows:

<< TX CIV ST Art. 581–4 >>

A. The term “security” or “securities” shall include any limited partner interest in a limited partnership, share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not. **The term applies regardless of whether the “security” or “securities” are evidenced by a written instrument.** Provided, however, that this definition shall not apply to any insurance policy, endowment policy, annuity contract, optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been duly filed with the Department as now or hereafter required by law.

SECTION 2. Section 28, The Securities Act (Article 581–28, Vernon's Texas Civil Statutes), is amended by adding Subsection C to read as follows:

<< TX CIV ST Art. 581–28 >>

C. Assistance to Securities Regulator of Another Jurisdiction. The Commissioner may provide assistance to a securities regulator of another state or a foreign jurisdiction who requests assistance in conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to a securities matter the securities regulator is authorized to administer or enforce. The Commissioner may provide assistance by using the authority to investigate and any other power conferred by this section as the Commissioner determines is necessary and appropriate. In determining whether to provide the assistance, the Commissioner may consider:

- (1) whether the securities regulator is permitted and has agreed to provide assistance within the regulator's jurisdiction to the Commissioner reciprocally and at the Commissioner's request concerning securities matters;
- (2) whether compliance with the request for assistance would violate or otherwise prejudice the public policy of this state;
- (3) whether the conduct described in the request would also constitute a violation of this Act or another law of this state had the conduct occurred in this state; and

(4) the availability of Board employees and resources of the Board or Commissioner necessary to carry out the request for assistance.

SECTION 3. Section 29, The Securities Act (Article 581–29, Vernon's Texas Civil Statutes), is amended to read as follows:

<< TX CIV ST Art. 581–29 >>

Sec. 29. PENAL PROVISIONS. Any person who shall:

A. Sell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer or agent as in this Act provided shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both such fine and imprisonment.

B. Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both such fine and imprisonment.

C. In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, whether or not the transaction or security is exempt under Section 5 or 6 of this Act, directly or indirectly:

(1) engage in any fraud or fraudulent practice;

(2) employ any device, scheme, or artifice to defraud;

(3) knowingly make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) engage in any act, practice or course of business which operates or will operate as a fraud or deceit upon any person, is guilty of a felony and upon conviction shall be:

(a) imprisoned for not less than 2 or more than 10 years and fined not more than \$10,000, if the amount involved in the offense is less than \$10,000;

(b) imprisoned for not less than 2 or more than 20 years and fined not more than \$10,000, if the amount involved in the offense is \$10,000 or more but less than \$100,000; or

(c) imprisoned for life or for not less than 5 or more than 99 years and fined not more than \$10,000, if the amount involved is \$100,000 or more.

D. Knowingly violate a cease and desist order issued by the commissioner under the authority of Section 23A, 23B, or 23–2 of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

E. Knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this Act, whether or not such document or proceeding relates to a transaction or security exempt under the provisions of Sections 5 or 6 of this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both such fine and imprisonment.

F. Knowingly make any false statement or representation concerning any registration made under the provisions of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

G. Make an offer of any security within this State that is not in compliance with the requirements governing offers set forth in Section 22 of this Act shall be deemed guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

H. Knowingly make an offer of any security within this State prohibited by a cease publication order issued by the Commissioner under Section 23C of this Act shall be deemed guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

I. Render services as an investment adviser or an investment adviser representative without being registered as required by this Act shall be deemed guilty of a felony and on conviction of the felony shall be sentenced to pay a fine of not more than \$5,000 or imprisonment in the penitentiary for not less than two or more than 10 years, or by both the fine and imprisonment.

SECTION 4. Section 32, The Securities Act (Article 581–32, Vernon's Texas Civil Statutes), is amended by amending Subsection B and adding Subsection C to read as follows:

<< TX CIV ST Art. 581–32 >>

B. The Attorney General may, in an action under Subsection A of this section or in a separate action in District Court, seek equitable relief, including restitution, for a victim of fraudulent practices. The court may grant any equitable relief that the court considers appropriate and may order the defendant to deliver to the person defrauded the amount of money or the property that the defendant obtained from the person by the fraudulent practices.

C. In an action brought under this section for fraud or a fraudulent practice in connection with the sale of a security, the Attorney General may seek, for an aggrieved person, the disgorgement of any economic benefit gained by the defendant through the violation, including a bonus, fee, commission, option, proceeds, profit from or loss avoided through the sale of the security, or any other tangible benefit. The Attorney General may recover from an order of disgorgement obtained under this subsection reasonable costs and expenses incurred by the Attorney General in bringing the action.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

Passed the Senate on April 3, 2003: Yeas 29, Nays 0; the Senate concurred in House amendment on May 6, 2003: Yeas 30, Nays 0; passed the House, with amendment, on May 1, 2003: Yeas 142, Nays 0, one present not voting.

Approved May 20, 2003.

Effective May 20, 2003.

TX LEGIS 108 (2003)