

**SUBJECT:** Increasing fines and penalties for certain violations of the Securities Act

**COMMITTEE:** Pensions, Investments, and Financial Services — favorable, without amendment

**VOTE:** 9 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey  
0 nays

**WITNESSES:** For — None  
Against — None  
On — Benette Zively, Texas State Securities Board

**BACKGROUND:** VTCS, Title 19 is the Securities Act, administered by the State Securities Board and the securities commissioner. Art. 581-4 provides definitions for “investment adviser” and “investment adviser representative,” and Art. 581-23-1 regulates the assessment of administrative fines issued by the commissioner. Art. 581-29 and Art. 581-32 regulate the penal provisions and the civil injunctions and restitutions associated with the Securities Act, respectively.

**DIGEST:** HB 2342 would increase fines and penalties for certain violations of the Securities Act. The bill would expand the administrative fines in Art. 581-23-1, criminal penalties in Art. 581-29, and civil penalties in Art. 581-32.

*Administrative fines.* HB 2342 would increase the maximum administrative fine available to the commissioner to the greater of \$20,000 per violation or the amount of any economic benefit gained by the act. The bill also would authorize the commissioner to assess an additional amount of no more than \$250,000 if the fine-incurring act was committed against a person at least 65 years old.

The bill also would enable the commissioner to assess fines against anyone who materially aided a person engaged in a practice punishable with an administrative fine.

***Criminal penalties.*** HB 2342 would increase criminal penalties for violations of the Securities Act, redefining them with terms used by the Penal Code, i.e., felonies of the first, second, and third degree and state-jail felonies. The bill would increase the penalty for knowingly violating a commissioner's cease-and-desist order from less than a state-jail felony to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). Other provisions would convert penalties into third-degree felonies or state-jail felonies by requiring the previously optional imprisonment sentence to be served, doubling the maximum fine available, and, in the case of state-jail felonies, raising the minimum incarceration sentence.

The bill would enable the state to bring criminal penalties against investment advisers or their representatives if they have committed acts of fraud.

The bill would specify that enhancement of criminal penalties for repeat offenders, as provided by the Penal Code, was allowed.

***Civil penalties.*** HB 2342 would authorize the attorney general, at the request of the commissioner, to seek civil penalties equivalent to the administrative fines available to the commissioner.

The bill would allow the attorney general to seek restitution and disgorgement of economic benefit for victims of any violation of the Securities Act, not just fraudulent security sales. The bill would allow only the attorney general to do so at the request of the commissioner.

***Effective date and scope of applicability.*** The bill would take effect on September 1, 2011, and would apply only to a violation that entirely occurred or an offense entirely committed on or after the effective date.

**SUPPORTERS  
SAY:**

HB 2342 would provide the State Securities Board with the additional tools it needs to protect investors from Wall Street firms and others who see the current fines and penalties available under the Securities Act as nothing more than the cost of doing business in Texas. Increasing the commissioner's fining authority would better reflect the size and complexity of today's financial markets, better deter fraud against older investors, increase investor confidence, and encourage capital formation in the state.

The bill would modernize the Securities Act, aligning it with the Penal Code and adapting it to the realities of today's advanced technologies. The administrative fines that the bill would update have not been increased since they were established in 1995, and the criminal penalties have not been changed since 1991. Meanwhile, the Internet has increased access to Texas investors, and fraudulent operators now can quickly amass large sums of money in a short amount of time from investors seeking high returns and low risk. The increased fines and reconciled criminal penalties of HB 2342 would deter bad actors and facilitate the state's enforcement of the Securities Act against those not deterred.

HB 2342 appropriately would provide extra protection for senior citizens, who are increasingly the targets of financial fraud. According to a 2010 survey of over 2,000 older Americans conducted by Infogroup/ORC, one in five citizens over the age of 65 has been the victim of a financial swindle. Older investors make tempting targets because they may have amassed considerable assets after a lifetime of working and saving, and because they are frequently home alone with no family members present to provide advice or caution. Tragically, one investment scam can shatter a senior citizen's retirement plans. The Texas Deceptive Trade Practices Act also provides an additional fine for deceptive acts involving consumers over 65. HB 2342's extra protection for older Texans is much needed and much deserved.

The bill would have no significant fiscal implication for the state, and the Securities Board, attorney general, and comptroller could accomplish their duties and responsibilities associated with implementing the bill by using existing resources. Although the bill would increase criminal penalties, the Texas Department of Criminal Justice found that the relatively small number of offenders that would be convicted under the bill's provisions would have no significant impact on demand for the resources of the correctional system.

**OPPONENTS  
SAY:**

By increasing the penalties for criminal offenses, HB 2342 would increase demands upon the correctional system due to longer terms of confinement in jail or prison. Not only would the bill increase the criminal penalties for specific violations, it also would encourage the use of penalty enhancement provisions for repeat offenders. These provisions would further strain the correctional system when its resources are already stretched by budget cuts.

OTHER  
OPPONENTS  
SAY:

If the bill would authorize a \$250,000 administrative fine or civil penalty for fraud committed against some Texans, then it should extend that same protection to all Texans. If the state establishes special protection for Texans over 65 because they are considered a vulnerable population, then it should also extend special-protection status to other populations vulnerable to fraud, such as young adults or the chronically ill or disabled.

NOTES:

The companion bill, SB 1281 by Watson, was reported favorably, as substituted, by the Senate Business and Commerce Committee on April 11 and was placed on the April 21 Local and Uncontested Calendar.