

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1060
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Government Organization
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Committee Report (Substituted)

DIGEST AND PURPOSE

The recent investment securities scandals have highlighted what some say are shortcomings in the rules and regulations enforcement of investment securities. C.S.S.B.1060 provides for improved investment securities enforcement.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional Rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 581-4, V.T.C.S., to clarify that the definition of security applies whether or not a security is evidenced by a written instrument.

SECTION 2. Amends Article 581-28, V.T.C.S., by adding Subsection C, as follows:

C. Assistance to Securities Regulator of Another Jurisdiction. Authorizes the Securities Commissioner to 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. Authorizes the commissioner to provide assistance by using the authority to investigate and any other power conferred by this section as the commissioner determines is necessary and appropriate. Authorizes the assistance to be provided without regard to 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. Authorizes the commissioner, in determining whether to provide the assistance, to consider certain factors.

SECTION 3. Amends Article 581-29, V.T.C.S., as follows:

I. Requires any person who renders services, directly or through an investment adviser representative, as an investment adviser without being a registered investment adviser as required by this Act or without submitting a notice filing as required by Section 12-1 of this Act to be considered guilty of a felony and on conviction of the felony to 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. Amends Article 581-32, V.T.C.S., by amending Subsection B and adding Subsection C, as follows:

B. Broadens the scope of the Securities Act to permit the state to obtain restitution for victims of fraudulent practices against any person or company that has engaged in prohibited conduct.

C. Authorizes the attorney general, in an action brought under this section for fraud or a fraudulent practice in connection with the sale of a security, to seek 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. Authorizes the attorney general to 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. Effective date: upon passage or September 1, 2003.

SUMMARY OF COMMITTEE CHANGES

SECTION 4. Differs from the original by adding new language to proposed text regarding an order of disgorgement.