

## **BILL ANALYSIS**

Senate Research Center  
86R31540 GRM-D

C.S.H.B. 1535  
By: Flynn et al. (Nichols)  
Business & Commerce  
5/9/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.H.B. 1535 amends current law relating to the continuation and functions of the State Securities Board.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Securities Board in SECTION 5 (Article 581-3, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subsections J and O, Section 2, The Securities Act (Article 581-2, V.T.C.S.), as follows:

J. Requires the report made by the Texas State Securities Board (SSB), with the advice of the securities commissioner (commissioner), on or before January 1 of each year, to the governor and the presiding officer of each house of the legislature as to SSB's administration of this Act, as well as plans and needs for future securities regulation to include:

(1) creates this subdivision from existing text and requires the report to include a detailed accounting of all funds received and disbursed by SSB during the preceding year, including the amount spent by SSB assisting in the criminal prosecution of cases under Subsection B of Section 3 of this Act, rather than a detailed accounting of all funds received and disbursed by SSB during the preceding year; and

(2) with respect to cases referred during the preceding year by SSB under Subsection A of Section 3 of this Act, a breakdown by county and district attorney of the number of cases where criminal charges were filed, prosecution is ongoing, or prosecution was completed.

O. Provides that, unless continued in existence as provided by Chapter 325, Government Code (Texas Sunset Act), SSB is abolished and this Act expires September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 2-3, The Securities Act (Article 581-2-3, V.T.C.S.), by amending Subsection B and adding Subsection D, as follows:

B. Requires the training program required for SSB members to provide a person with information regarding:

(1) the law governing SSB operations, rather than the legislation that created SSB;

(2) the programs, functions, rules and budget of SSB, rather than the programs operated by SSB;

(3) the scope of and limitations on the rulemaking authority of SSB, rather than the role and functions of SSB. Deletes existing text requiring the training to provide information regarding the rules of SSB with an emphasis on the rules that relate to disciplinary and investigative authority and creates this subdivision from existing Subdivision (4);

(4) the types of SSB 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 SSB regulates, including any rule, interpretation, or enforcement action that:

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

(B) restricts advertising by persons in a profession or business SSB regulates;

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

(D) restricts participation in a profession or business SSB regulates;

(5) deletes existing text relating to the current budget for SSB, creates this subdivision from existing Subdivision (6), and renumbers subsequent subdivisions accordingly;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts-of-interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties, rather than other laws relating to public officials, including conflict-of-interest laws.

(7) makes no further changes to this subdivision.

Deletes existing text relating to Chapters 551 (Open Meetings), 552 (Public Information), and 2001 (Administrative Procedure), Government Code. Deletes paragraph designations (C) and (D). Makes nonsubstantive changes throughout Subdivision (6).

D. Requires the commissioner to create a training manual that includes the information required by Subsection B of this section. Requires the commissioner to distribute a copy of the training manual annually to each member of SSB. Requires each member of SSB to sign and submit to the commissioner a statement acknowledging that the SSB member received and has reviewed the training manual.

SECTION 3. Amends Section 2-6, The Securities Act (Article 581-2-6, V.T.C.S.), as follows:

Art. 581-2-6. COMPLAINTS INFORMATION. A. Requires the commissioner or the commissioner's designee to maintain a system to promptly and efficiently act on complaints filed with the commissioner or SSB, rather than maintain a file on each written complaint filed with the commissioner or SSB concerning an employee, former employee, or person registered under this Act. Requires the commissioner or the commissioner's designee to 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. Deletes existing text requiring the file to include certain information.

B. Requires the commissioner or the commissioner's designee to make information available describing SSB's procedures for complaint investigation and resolution, rather than provide to the person filing the complaint and to each person who is a subject of the complaint a copy of SSB's policies and procedures relating to complaint investigation and resolution.

C. Requires the commissioner or the commissioner's designee to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation, rather than requiring the commissioner or the commissioner's designee, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 4. Amends The Securities Act (Article 581-1 et seq., V.T.C.S.) by adding Section 2-8, as follows:

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

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of SSB rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution For Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under SSB's jurisdiction.

B. Requires SSB's procedures relating to alternative dispute resolution to 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. Requires SSB to coordinate the implementation of the policy adopted under Subsection A of this section, to provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and to collect data concerning the effectiveness of those procedures.

SECTION 5. Amends Section 3, The Securities Act (Article 581-3, V.T.C.S.), as follows:

Art. 581-3. ADMINISTRATION AND ENFORCEMENT BY THE SECURITIES COMMISSIONER AND THE ATTORNEY GENERAL AND LOCAL LAW ENFORCEMENT OFFICIALS. A. Creates this subsection from existing text and makes no further changes to this subsection.

B. Authorizes SSB, subject to Subsection E of this section, to 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 SSB to the attorney under Subsection A of this section.

C. Requires the commissioner, before referring a case to a county or district attorney for prosecution as required by Subsection A of this section, to make a determination of the potential resources of SSB, including the number and types of SSB employees, that would be needed to assist in the prosecution of the case and to make a determination of the availability of SSB employees and other resources necessary to carry out any request for assistance.

D. Requires SSB by rule to 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. Requires the rules to require the commissioner to consider:

(1) whether resources are available after taking into account any ongoing SSB investigations, investigations under Section 28 (Investigations, Investigatory Materials, and Registration Related Materials) 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. Authorizes SSB, in response to a request for assistance under Subsection B of this section, to provide only those SSB employees or resources, if any, determined to be available for that case in accordance with Subsection C of this section. Authorizes the commissioner, if a change in circumstances occurs after the time of the determination under Subsection C of this section, to reconsider the commissioner's determination under that subsection and to increase or reduce the number of SSB employees or other resources to be made available for a case using the process established under Subsection D of this section.

F. Requires the Texas attorney general (attorney general), at least biennially, to review a sample of criminal cases for which SSB provided requested assistance to county or district attorneys under this section. Requires the review to 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 and any subsequent determination of those resources made by the commissioner as authorized under Subsection E of this section. Authorizes the attorney general to report any concerns the attorney general has in connection with SSB's provision of assistance to the standing committee of each house of the legislature with primary jurisdiction over SSB matters.

SECTION 6. Amends The Securities Act (Article 581-1 et seq., V.T.C.S.) by adding Section 32-1, as follows:

Sec. 32-1. REFUND. A. Authorizes the commissioner, subject to Subsection B of this section, to 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. Prohibits the amount of a refund ordered as provided in an agreed order or an enforcement order from exceeding the amount the client or purchaser paid to the dealer, agent, investment adviser, or investment adviser representative for a service or transaction regulated by SSB. Prohibits the commissioner from requiring payment of other damages or estimating harm in a refund order.

SECTION 7. Amends Subsection B, Section 35, The Securities Act (Article 581-35, V.T.C.S.), to delete existing text requiring the commissioner or SSB to charge and collect a fee of \$25 for registering a branch office and to make nonsubstantive changes to this section.

SECTION 8. (a) Provides that, except as provided by Subsection (b) of this section, Section 2-3, The Securities Act (Article 581-2-3, V.T.C.S.), as amended by this Act, applies to a member of SSB appointed before, on, or after the effective date of this Act.

(b) Requires a member of SSB who, before the effective date of this Act, completed the training program required by Section 2-3, The Securities Act (Article 581-2-3, V.T.C.S.),

as that law existed before the effective date of this Act, 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, V.T.C.S.), as amended by this Act. Prohibits a member of SSB described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of SSB held on or after December 1, 2019, until the member completes the additional training.

SECTION 9. Makes application of Subsection A, Section 2-6, The Securities Act, (Article 581-2-6, V.T.C.S.), as amended by this Act, prospective.

SECTION 10. Requires SSB, not later than March 1, 2020, to adopt rules necessary to implement the changes in law made by this Act to Section 3, The Securities Act (Article 581-3, V.T.C.S.).

SECTION 11. Provides that the change in law made by this Act to Section 35, The Securities Act (Article 581-35, V.T.C.S.), 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. Effective date: September 1, 2019.