

BILL ANALYSIS

Senate Research Center

H.B. 3480
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some third party administrators (TPAs) are being authorized to be the sole provider for 457(b) products. Through this relationship, some TPAs are attempting to push their own 403(b) product, at the expense of existing ones, despite clear prohibition in the law that a school may not accept any benefit from a company offering a qualified investment product, such as a 403(b) plan. This deceptive practice hurts teachers who may buy retirement plans unnecessarily, as well as other third-party agents who cannot compete with large agencies offering their services as "loss-leaders."

Business models that allow companies that are contracted with school districts to be their third party administrator as well as a vendor, or affiliated vendor, result in an inherent conflict of interest. Such a business model does not provide sufficient protections to ensure that the information given to or the products offered to school teachers are objective and in their best interest.

The bill would provide safeguards to protect teachers' investments by requiring firms to register with, be licensed by, or be regulated by the Texas Department of Insurance (TDI), the State Securities Board (SSB), and the Texas Department of Banking (TDB), respectively, and to require that their products are approved by the Teacher Retirement System of Texas (TRS). This would ensure that all service providers and their products were appropriately vetted before a company could enter into a contract with a school district. The bill would also allow TDI, SSB, and TDB to investigate any complaint received from TRS regarding this issue. This, in addition to fines ranging up to \$1 million, would be an effective deterrent to fraudulent activity. The bill also would increase teacher 403(b) investment options by allowing TRS to certify other non-annuity investment programs, known as mutual fund platforms. This would provide teachers access to multiple mutual fund families at potentially lower costs than current offerings.

H.B. 3480 amends current law relating to certain investment products made available to certain public school employees and the companies authorized to provide those products and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Teacher Retirement System of Texas in SECTION 2 (Section 6, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.)) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

Sec. 4. Provides that in this section and in Sections 5 (relating to authorizing an educational institution to enter into a salary reduction agreement with an employee of the institution), 6 (relating to a provision that a company is eligible to certify to the Teacher Retirement System (TRS) under Section 5 if certain financial strength criteria is met), 7 (relating to authorizing TRS to collect a fee), 8 (relating to authorizing a company to certify to TRS based on rules adopted by the board of trustees), 8A (relating to requirements of a qualified investment product), 9 (relating to prohibiting an educational institution from performing certain actions), 10 (relating to a provision that a person

commits an offense if the person performs certain actions), 11 (relating to requiring a person who offers to sell an annuity contract that is or will likely be the subject of a salary reduction agreement to provide notice to a potential purchaser), 12 (relating to requirements of a company that offers an eligible qualified investment that is subject to a salary reduction agreement), and 13 (relating to authorizing the board of trustees to deny, suspend, or revoke the certification or recertification of a company) of this Act, certain definitions apply.

SECTION 2. Amends Section 6, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), by amending Subsections (c), (d), (e), and (f) and adding Subsections (d-1), (d-2), and (f-1), as follows:

(c) Authorizes TRS, after consultation with the Texas Department of Insurance (TDI), the Texas Department of Banking (TDB), and the State Securities Board (SSB), to adopt rules only to administer this section and Sections 5, 7, 8, 8A, 9A, 9B, 11, 12, and 13 of this Act.

(d) Requires TRS to refer all complaints about qualified investment products, including complaints that allege violations of this Act by companies that certify to TRS under Section 5 or 8 of this Act that the companies offer qualified investment products, to the appropriate division of TDI, TDB, or SSB.

(d-1) Requires TDI, TDB, or SSB, except as provided by Subsection (d-2) of this section, to investigate a complaint received from TRS under Subsection (d) of this section. Requires TDI, TDB, or SSB, if as a result of the investigation TDI, TDB, or SSB, as applicable, determines that a violation of this Act may have occurred, as applicable, to forward the results of the investigation relating to an alleged violation of this Act to the attorney general.

(d-2) Requires TDB, if TDB receives a complaint from TRS under Subsection (d) of this section that relates to a federally chartered financial institution, to refer the complaint to the appropriate federal regulatory agency and notify the attorney general of TDB's referral.

(e) Requires TDI, TDB, and SSB to cooperate with TRS in the administration of this Act and to submit a report to, rather than notify, TRS at the beginning of each quarter of the fiscal year that provides the status of any enforcement action taken or investigation or referral made, rather than determination, regarding a product or a company that is the subject of a complaint under Subsection (d) of this section and promptly notify TRS of any final enforcement order issued regarding the product or company, rather than a company that violates Section 5 or 8A of this Act.

(f) Authorizes TRS to deny, suspend, or revoke, rather than requires TRS to reject, the certification of a company if TRS receives notice that the company or the company's product was determined to be in violation of this Act or another law in any judicial or administrative proceeding, rather than receives notice under Subsection (e) of this section or Section 5(c) of this Act of a violation regarding the company or the company's product.

(f-1) Authorizes a company whose certification is denied, suspended, or revoked under this section to recertify to the board of trustees after any applicable period of suspension or revocation. Makes a nonsubstantive change.

SECTION 3. Amends Section 8(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Authorizes a company that offers qualified investment products other than annuity contracts, including a company that offers custodial accounts under Section 403(b)(7), Internal Revenue Code of 1986, that hold only investment products registered with the system under Section 8A of this Act, to certify to TRS based on rules adopted by the board of trustees.

SECTION 4. Amends Section 9(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Prohibits an educational institution from performing certain acts including:

(1) except as provided by Subdivision (8) of this subsection and Subsection (b) (relating to authorizing an educational institution to refuse to enter into a salary reduction agreement with an employee for certain reasons) of this section, refusing to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction is an eligible qualified investment and is registered with the system under Section 8A;

(5) granting exclusive access to information about an employee's financial information, including information about an employee's qualified investment products, to a company or agent or affiliate of a company offering qualified investment products unless the employee consents in writing to the access;

(7) using public funds to recommend a qualified investment product offered by a company or an agent or affiliate of a company that offers a qualified investment product; or

(8) entering into or continuing a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked.

SECTION 5. Amends Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Provides that a person commits an offense if the person performs certain acts including selling or offering for sale an investment, rather than a qualified investment, product that is not an eligible qualified investment or that is not registered under Section 8A of this Act and that the person knows will be the subject of a salary reduction agreement.

SECTION 6. Amends Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), by adding Section 10A, as follows:

Sec. 10A. (a) Provides that a person who violates this Act is subject to a civil penalty in an amount that does not exceed \$10,000 for a single violation or \$1,000,000 for multiple violations.

(b) Requires the court, for purposes of determining the amount of a civil penalty under this section, to consider the following factors; the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation; the harm to other persons resulting directly or indirectly from the violation; cooperation by the person in any inquiry conducted by the state concerning the violation, efforts to prevent future occurrences of the violation, and efforts to mitigate the harm caused by the violation; the history of previous violations by the person; the need to deter the person or others from committing such violations in the future; and other matters as justice may require.

(c) Authorizes the attorney general to institute an action for injunctive relief to restrain a violation by a person who is or who appears to be in violation of or threatening to violate this Act or to collect a civil penalty under this section.

(d) Requires that an action under this section be filed in a district court in Travis County.

(e) Authorizes the attorney general to recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 7. (a) Makes application of Section 9(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as amended by this Act, prospective.

(b) Makes application of Sections 9A and 9B, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as added by this Act, prospective.

(c) Makes application of Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as amended by this Act, and Section 10A, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as added by this Act, prospective.

SECTION 8. Effective date: September 1, 2009.