

CHAPTER 732

H.B. No. 875

AN ACT

relating to the regulation of securities and fees related to regulation.

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

SECTION 1. Subsection A, Section 22, The Securities Act (Article 581-22, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Permitted Written, Pictorial, or Broadcast Offers. A written or printed offer (including a pictorial demonstration with any accompanying script) or a broadcast offer (i.e., an offer disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State if:

(1) a copy of the offer is filed with the Commissioner *within 10 days after the date of its first* ~~[prior to its]~~ use in this State; and

(2) the person making or distributing the offer in this State is a registered dealer or a registered salesman of a registered dealer, as required by this Act; and

(3) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(4) if registration has not become effective under Subsection B or C of Section 7 or a permit has not been granted under Section 10, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:

(a)

INFORMATIONAL ADVERTISING ONLY.

THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE.

or

(b) other language required by the United States Securities and Exchange Commission that in the Commissioner's opinion will inform investors that the securities may not yet be sold; and

(5) the person making or distributing the offer in this State;

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(6) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or a permit is granted under Section 10.

SECTION 2. Section 23, The Securities Act (Article 581-23, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. CEASE-DESIST ORDERS; STOP-OFFER NOTICES; LIST OF SECURITIES OFFERED. Anything in this Act to the contrary notwithstanding,

A. If it appears to the commissioner at any time that the sale or proposed sale or method of sale of any securities, whether exempt or not, would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may *hold a hearing on a date determined by the commissioner within 30 days after the date of receipt of actual notice by, or notice by registered or certified mail to the person's last known address is given to, [after notice to] the issuer, the registrant, [and] the person on whose behalf such securities are being or are to be offered, or any person acting as a dealer in violation of this Act. If [by personal service or the sending of a confirmed telegraphic notice, and after opportunity for a hearing (at a time fixed by the commissioner) within 15 days after such notice by personal service or the sending of such telegraphic notice, if]* the commissioner shall determine at such hearing that such sale would not be in compliance with the Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, *the commissioner may issue a written cease and desist order, prohibiting or suspending the sale of such securities or denying or revoking the registration of such securities or prohibiting an unregistered person from acting as a dealer.* No dealer, agent or salesman shall thereafter knowingly sell or offer for sale any security named in such cease and desist order.

B. No person shall make an offer within this State after notice in writing has been given him by the commissioner that, in the commissioner's opinion, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof.

C. The commissioner may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the commissioner a list of securities which he has offered for sale or has advertised for sale within this State during the preceding six months, or which he is at the time offering for sale or advertising, or any portion thereof.

SECTION 3. Section 35, The Securities Act (Article 581-35, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35. FEES. ~~[(a)]~~ The Commissioner or Board shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

A. For the filing of any original application of a dealer, Seventy Dollars (\$70.00), and for the filing of any renewal application of a dealer, Thirty-five Dollars (\$35.00) ~~[plus Fifteen Dollars (\$15.00) for each person listed as an officer in the application];~~

B. For the filing of any original application for each *agent, officer, or salesman*, Thirty Dollars (\$30.00), and for the filing of any renewal application for each *agent, officer, or salesman*, Fifteen Dollars (\$15.00);

C. For any filing to amend the registration certificate of a dealer or evidence of registration of a salesman, or issue a duplicate certificate or evidence of registration, *Twenty-five Dollars (\$25.00)* [~~Five Dollars (\$5.00)~~];

D. For the filing of any original, amended or renewal application to sell or dispose of securities, Ten Dollars (\$10.00);

E. For the examination of any original or amended application filed under Subsection A, B, or C of Section 7 of this Act, regardless of whether the application is denied, abandoned, withdrawn, or approved, a fee of one-tenth ($\frac{1}{10}$) of one percent (1%) of the aggregate amount of securities described and proposed to be sold to persons located within this state based upon the price at which such securities are to be offered to the public;

F. For certified copies of any papers filed in the office of the Commissioner, the Commissioner shall charge such fees as are reasonably related to costs; however, in no event shall such fees be more than those which the Secretary of State is authorized to charge in similar cases; [~~and~~]

G. For the filing of any application for approval of a stock exchange so that securities fully listed thereon will be exempt, a fee of Two Hundred and Fifty Dollars (\$250.00);[.]

H. *For the filing of a request to take the Texas Securities Law Examination, Thirty-five Dollars (\$35.00);*

I. *For the filing of an initial notice required by the Commissioner to claim a secondary trading exemption, a fee of Five Hundred Dollars (\$500.00), and for the filing of a secondary trading exemption renewal notice, a fee of Five Hundred Dollars (\$500.00);*

J. *For the filing of an initial notice required by the Commissioner to claim a limited offering exemption, a fee of one-tenth ($\frac{1}{10}$) of one percent (1%) of the aggregate amount of securities described as being offered for sale, but in no case more than Five Hundred Dollars (\$500.00); and*

K. ~~For [(b) The Commissioner or Board may charge and collect a fee for] an interpretation by the Board's general counsel of this Act or a rule adopted under this Act, a fee of [The amount of the fee may not exceed] One Hundred Dollars (\$100.00), except that an[—An] officer or employee of a governmental entity and the entity that the officer or employee represents are exempt from the [any] fee [adopted] under this subsection when the officer or employee is conducting official business of the entity.~~

SECTION 4. Section 35-1, The Securities Act (Article 581-35-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 35-1. SALE OF SECURITIES IN EXCESS OF AMOUNT REGISTERED; FEES.

A. An offeror who sells securities in this State in excess of the aggregate amount of securities registered may, while such registration is still effective, apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under Subsection E of Section 35 for the securities sold to persons within this State, plus the amendment fee prescribed by Subsection D of Section 35. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

B. *An offeror who has filed a notice to claim a limited offering exemption, who paid less than the maximum fee prescribed in Subsection J of Section 35, and who offered a greater amount of securities than authorized pursuant to the formula prescribed in Subsection J of Section 35, may, within one year of the date on which the Commissioner received the initial notice, file an amended notice disclosing the amount of securities offered and paying three times the difference between the fee initially paid and the fee which should have been paid. The amended notice shall be retroactive to the date of the initial filing.*

SECTION 5. The amendments made by this Act to Section 35, The Securities Act (Article 581-35, Vernon's Texas Civil Statutes), apply only to a fee accruing on or after the effective date of this Act. A fee accruing before the effective date of this Act is governed by the law in effect when the fee accrued, and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1987, by a non-record vote. Passed by the Senate on May 28, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Sept. 1, 1987.