

1-1 By: Birdwell, Whitmire S.B. No. 612
1-2 (In the Senate - Filed January 25, 2017; February 13, 2017,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 3, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 3, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Huffman	X			
1-9 Hughes	X			
1-10 Birdwell	X			
1-11 Creighton	X			
1-12 Estes	X			
1-13 Lucio	X			
1-14 Nelson	X			
1-15 Schwertner	X			
1-16 Zaffirini	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 612 By: Hughes

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to complaints filed with and certain other filings
1-22 submitted to the Texas Ethics Commission.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 571.0771(b), Government Code, is amended
1-25 to read as follows:

1-26 (b) Subsection (a) does not apply to:

1-27 (1) a penalty imposed under Section 571.069 or
1-28 Subchapter [E or] F; or
1-29 (2) a report required to be filed under Section
1-30 [254.038, 254.039] 254.064(c), 254.124(c), or 254.154(c),
1-31 Election Code.

1-32 SECTION 2. Section 571.097, Government Code, is amended to
1-33 read as follows:

1-34 Sec. 571.097. DEFENSES: [DEFENSE FOR] RELIANCE ON ADVISORY
1-35 OPINION; COMMISSION'S FAILURE TO ISSUE OPINION. (a) It is a
1-36 defense to prosecution or to imposition of a civil penalty that the
1-37 person reasonably relied on a written advisory opinion of the
1-38 commission relating to the provision of the law the person is
1-39 alleged to have violated or relating to a fact situation that is
1-40 substantially similar to the fact situation in which the person is
1-41 involved.

1-42 (b) It is a defense to prosecution or to imposition of a
1-43 civil penalty for the violation of a law that:

1-44 (1) the person requested a written advisory opinion
1-45 from the commission relating to the application of that law to a
1-46 specified existing fact situation involving the person that is the
1-47 same fact situation or substantially similar to the fact situation
1-48 that forms the basis of the alleged violation; and

1-49 (2) the commission did not issue the opinion within
1-50 the time prescribed by Section 571.092.

1-51 SECTION 3. Section 571.1212, Government Code, is amended to
1-52 read as follows:

1-53 Sec. 571.1212. CATEGORIZATION OF VIOLATIONS. An allegation
1-54 of a violation listed as a Category One violation shall be treated
1-55 as a Category Two violation if the executive director at any time
1-56 determines that:

1-57 (1) the allegation arises out of the same set of facts
1-58 as those that give rise to an allegation of a Category Two
1-59 violation, and the interests of justice or efficiency require
1-60 resolution of the allegations together; or

(2) the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 571.1242 [571.1242(a)].

SECTION 4. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1223 to read as follows:

Sec. 571.1223. DISMISSAL OF COMPLAINT FOLLOWING CORRECTED OR AMENDED STATEMENT, REGISTRATION, OR REPORT. At any stage of a proceeding under this subchapter, the commission shall dismiss a complaint to the extent the complaint alleges a statement, registration, or report violates a law or rule if:

(1) the respondent has filed a corrected or amended statement, registration, or report before the commission accepts jurisdiction over the complaint; and

(2) the corrected or amended statement, registration, or report remedies the alleged violation.

SECTION 5. The heading to Section 571.1241, Government Code, is amended to read as follows:

Sec. 571.1241. REVIEW OF EXECUTIVE DIRECTOR'S DETERMINATION OF [NO] JURISDICTION

DETERMINATION OF [NO] JURISDICTION.
SECTION 6. Section 571.1241(a), Government Code, is amended to read as follows:

(a) If the executive director determines that the commission does not have jurisdiction over the violation alleged in the complaint, the complainant or respondent may request that the commission review the determination. A request for review under this section must be filed not later than the 30th day after the date the complainant or respondent receives the executive director's determination.

SECTION 7. The heading to Section 571.1242, Government Code, is amended to read as follows:

Sec. 571.1242. PRELIMINARY REVIEW [] RESPONSE BY
~~RESPONDENT~~].

SECTION 8. Sections 571.1242(a), (b), and (c), Government Code, are amended to read as follows:

(a) If the alleged violation is a Category One violation, [+] [~~(1)~~] the respondent must respond to the notice required by Section 571.123(b) not later than the 10th business day after the date the respondent receives the notice[, and [~~(2)~~] if the matter is not resolved by agreement between the commission and the respondent before the 30th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted].

(b) If the alleged violation is a Category Two violation, [+] [~~(1)~~] the respondent must respond to the notice required by Section 571.123(b) not later than the 25th business day after the date the respondent receives the notice under Section 571.123(b) [; and]

[(2) if the matter is not resolved by agreement between the commission and the respondent before the 75th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted].

(c) A respondent's failure to timely respond as required by Subsection (a) [~~(a)(1)~~] or (b) [~~(b)(1)~~] is a Category One violation.

SECTION 9. Section 571.1243, Government Code, is redesignated as Section 571.1242(f), Government Code, and amended to read as follows:

(f) [Sec. 571.1243.] PRELIMINARY REVIEW: WRITTEN QUESTIONS.] During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

SECTION 10. Section 571.1242, Government Code, is amended

3-1 by adding Subsections (g), (h), (i), and (j) to read as follows:

3-2 (g) Not later than the 120th day after the later of the date
3-3 the commission receives a respondent's response to notice as
3-4 required by Subsection (a) or (b) or the respondent's response to
3-5 written questions as required by Subsection (f), the commission
3-6 must:

3-7 (1) propose an agreement to the respondent to settle
3-8 the complaint without holding a preliminary hearing; or
3-9 (2) dismiss the complaint.

3-10 (h) The deadline under Subsection (g) is tolled for the
3-11 duration of any litigation brought by the respondent or the
3-12 commission regarding the complaint at issue.

3-13 (i) If a respondent rejects a proposed settlement under
3-14 Subsection (g), the matter must be set for a preliminary review
3-15 hearing at the next commission meeting for which notice has not yet
3-16 been posted.

3-17 (j) If a complaint is dismissed under Subsection (g), the
3-18 commission shall deny jurisdiction over any subsequent complaint
3-19 against the respondent that alleges the respondent violated the
3-20 same statutes or rules based on the same facts alleged in the
3-21 dismissed complaint.

3-22 SECTION 11. Section 571.125, Government Code, is amended by
3-23 adding Subsection (f) to read as follows:

3-24 (f) Counsel for the respondent may subpoena a witness to a
3-25 preliminary review hearing in the same manner as an attorney may
3-26 issue a subpoena in a proceeding in a county or district court.

3-27 SECTION 12. Section 571.130, Government Code, is amended by
3-28 adding Subsection (f) to read as follows:

3-29 (f) Counsel for the respondent may subpoena a witness to a
3-30 formal hearing in the same manner as an attorney may issue a
3-31 subpoena in a proceeding in a county or district court.

3-32 SECTION 13. Section 571.1242(e), Government Code, is
3-33 repealed.

3-34 SECTION 14. The changes in law made by this Act to Chapter
3-35 571, Government Code, apply only to the effect or resolution of a
3-36 complaint filed under that chapter on or after the effective date of
3-37 this Act. The effect or resolution of a complaint filed before the
3-38 effective date of this Act is governed by the law in effect when the
3-39 complaint was filed, and the former law is continued in effect for
3-40 that purpose.

3-41 SECTION 15. This Act takes effect September 1, 2017.

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