

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				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	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

2-1 (2) the facts and law related to a particular
 2-2 allegation or a defense to the allegation present a level of
 2-3 complexity that prevents resolution through the preliminary review
 2-4 procedures for Category One violations prescribed by Section
 2-5 571.1242 [~~571.1242(a)~~].

2-6 SECTION 4. Subchapter E, Chapter 571, Government Code, is
 2-7 amended by adding Section 571.1223 to read as follows:

2-8 Sec. 571.1223. DISMISSAL OF COMPLAINT FOLLOWING CORRECTED
 2-9 OR AMENDED STATEMENT, REGISTRATION, OR REPORT. At any stage of a
 2-10 proceeding under this subchapter, the commission shall dismiss a
 2-11 complaint to the extent the complaint alleges a statement,
 2-12 registration, or report violates a law or rule if:

2-13 (1) the respondent has filed a corrected or amended
 2-14 statement, registration, or report before the commission accepts
 2-15 jurisdiction over the complaint; and

2-16 (2) the corrected or amended statement, registration,
 2-17 or report remedies the alleged violation.

2-18 SECTION 5. The heading to Section 571.1241, Government
 2-19 Code, is amended to read as follows:

2-20 Sec. 571.1241. REVIEW OF EXECUTIVE DIRECTOR'S
 2-21 DETERMINATION OF ~~[NO]~~ JURISDICTION.

2-22 SECTION 6. Section 571.1241(a), Government Code, is amended
 2-23 to read as follows:

2-24 (a) If the executive director determines that the
 2-25 commission does not have jurisdiction over the violation alleged in
 2-26 the complaint, the complainant or respondent may request that the
 2-27 commission review the determination. A request for review under
 2-28 this section must be filed not later than the 30th day after the
 2-29 date the complainant or respondent receives the executive
 2-30 director's determination.

2-31 SECTION 7. The heading to Section 571.1242, Government
 2-32 Code, is amended to read as follows:

2-33 Sec. 571.1242. PRELIMINARY REVIEW [~~:- RESPONSE BY~~
 2-34 ~~RESPONDENT~~].

2-35 SECTION 8. Sections 571.1242(a), (b), and (c), Government
 2-36 Code, are amended to read as follows:

2-37 (a) If the alleged violation is a Category One violation, [~~+~~
 2-38 [~~(1)~~] the respondent must respond to the notice
 2-39 required by Section 571.123(b) not later than the 10th business day
 2-40 after the date the respondent receives the notice [~~, and~~

2-41 [~~(2) if the matter is not resolved by agreement~~
 2-42 ~~between the commission and the respondent before the 30th business~~
 2-43 ~~day after the date the respondent receives the notice under Section~~
 2-44 ~~571.123(b), the commission shall set the matter for a preliminary~~
 2-45 ~~review hearing to be held at the next commission meeting for which~~
 2-46 ~~notice has not yet been posted].~~

2-47 (b) If the alleged violation is a Category Two violation, [~~+~~
 2-48 [~~(1)~~] the respondent must respond to the notice
 2-49 required by Section 571.123(b) not later than the 25th business day
 2-50 after the date the respondent receives the notice under Section
 2-51 571.123(b) [~~, and~~

2-52 [~~(2) if the matter is not resolved by agreement~~
 2-53 ~~between the commission and the respondent before the 75th business~~
 2-54 ~~day after the date the respondent receives the notice under Section~~
 2-55 ~~571.123(b), the commission shall set the matter for a preliminary~~
 2-56 ~~review hearing to be held at the next commission meeting for which~~
 2-57 ~~notice has not yet been posted].~~

2-58 (c) A respondent's failure to timely respond as required by
 2-59 Subsection (a) [~~(a)(1)~~] or (b) [~~(b)(1)~~] is a Category One
 2-60 violation.

2-61 SECTION 9. Section 571.1243, Government Code, is
 2-62 redesignated as Section 571.1242(f), Government Code, and amended
 2-63 to read as follows:

2-64 (f) [~~Sec. 571.1243. PRELIMINARY REVIEW: WRITTEN~~
 2-65 ~~QUESTIONS.~~] During a preliminary review, the commission staff may
 2-66 submit to the complainant or respondent written questions
 2-67 reasonably intended to lead to the discovery of matters relevant to
 2-68 the investigation.

2-69 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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