

By: Flynn

H.B. No. 2820

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the registration and certification of certain
3 investment products made available to public school employees.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 ARTICLE 1. ELIGIBLE QUALIFIED INVESTMENTS

6 SECTION 1.01. Section 4, Chapter 22 (S.B. 17), Acts of the
7 57th Legislature, 3rd Called Session, 1962 (Article [6228a-5](#),
8 Vernon's Texas Civil Statutes), is amended to read as follows:

9 Sec. 4. In this section and in Sections 5, 6, [7, 8, 8A,] 9,
10 9A, 9B, 10, 11, and 12[, and 13] of this Act:

11 (1) ~~["Board of trustees" means the board of trustees
12 of the Teacher Retirement System of Texas.]~~

13 [(2)] "Educational institution" means a school
14 district or an open-enrollment charter school.

17 [A] is eligible to offer the product [certified
18 ~~to the board of trustees~~] under Section 6 [5] of this Act [; or

19 [(B) is eligible to certify to the board of
20 ~~trustees under Section 8 of this Act~~].

21 (3) [4) "Employee" means an employee of an
22 educational institution.

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9 [(7)] "Salary reduction agreement" means an agreement
10 between an educational institution and an employee to reduce the
11 employee's salary for the purpose of making direct contributions to
12 or purchases of a qualified investment product.

13 SECTION 1.02. Sections 5(a) and (f), Chapter 22 (S.B. 17),
14 Acts of the 57th Legislature, 3rd Called Session, 1962 (Article
15 [6228a-5](#), Vernon's Texas Civil Statutes), are amended to read as
16 follows:

17 (a) An educational institution may enter into a salary
18 reduction agreement with an employee of the institution only if the
19 qualified investment product [+]

20 [(1)] is an eligible qualified investment [; and
21 [(2) is registered with the retirement system under
22 Section 8A of this Act].

23 (f) To the greatest degree possible, educational
24 institutions that enter into a salary reduction agreement with
25 ~~[employers of]~~ employees ~~[who participate in the program offered]~~
26 under this section shall require that contributions to eligible
27 qualified investments be made by automatic payroll deduction and

1 deposited directly in the investment accounts.

2 SECTION 1.03. Sections 6(a) and (b), Chapter 22 (S.B. 17),
3 Acts of the 57th Legislature, 3rd Called Session, 1962 (Article
4 6228a-5, Vernon's Texas Civil Statutes), are amended to read as
5 follows:

6 (a) An insurance [A] company is eligible to offer qualified
7 investment products to the employees of educational institutions
8 under [certify to the retirement system under Section 5 of] this Act
9 if the company satisfies the following [financial strength]
10 criteria:

11 (1) the company is licensed by the Texas Department of
12 Insurance and is in compliance with minimum capital and surplus
13 requirements, including applicable risk-based capital and surplus
14 requirements prescribed by rules adopted by the department
15 [company's actuarial opinions required under Articles 1.11 and
16 3.28, Insurance Code, have not been adverse or qualified in the five
17 years preceding the date the application is filed,

18 [(2) the company is subject to the annual audit
19 requirements of Article 1.15A, Insurance Code, and its most recent
20 audit of financial strength conducted by an independent certified
21 public accountant is timely filed and does not indicate the
22 existence of any material adverse financial conditions in the
23 company for the five years preceding the filing deadline for the
24 audit,

25 [(3) the company has not been the subject of an
26 administrative or regulatory action by the Texas Department of
27 Insurance under Article 1.32 or 21.28-A or Section 83.051,

1 ~~Insurance Code, in the five years preceding the date the~~
2 ~~application is filed,~~

3 ~~[(4) the company has maintained during the five years~~
4 ~~preceding the date the application is filed an average of at least~~
5 ~~400 percent of the authorized control level, as calculated in~~
6 ~~accordance with the risk-based capital and surplus requirements~~
7 ~~established in rules adopted by the Texas Department of Insurance,~~

8 ~~[(5) the company has not fallen below 300 percent of the~~
9 ~~authorized control level, as calculated in accordance with the~~
10 ~~risk-based capital and surplus established in rules adopted by the~~
11 ~~Texas Department of Insurance, at any time in the five years~~
12 ~~preceding the date the application is filed]; and~~

13 ~~(2) [(6)] the company has [at least five years']~~
14 ~~experience in providing qualified investment products and has a~~
15 ~~specialized department dedicated to the service of qualified~~
16 ~~investment products, as determined by the educational institution.~~

17 ~~(b) A company that offers qualified investment products~~
18 ~~other than annuity contracts, including a company that offers~~
19 ~~custodial accounts under Section 403(b)(7), Internal Revenue Code~~
20 ~~of 1986, is eligible to offer qualified investment products to~~
21 ~~employees of educational institutions under this Act [For purposes~~
22 ~~of Subsection (a)(4) of this section, the company must calculate~~
23 ~~the five-year average on the same date each year].~~

24 SECTION 1.04. Section 9(a), Chapter 22 (S.B. 17), Acts of
25 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
26 Vernon's Texas Civil Statutes), is amended to read as follows:

27 (a) An educational institution may not:

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12 (4) grant exclusive access to an employee by
13 discriminating against or imposing barriers to any agent, broker,
14 or company that provides qualified investment products under this
15 Act;

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

21 (6) accept any benefit from a company or from an agent
22 or affiliate of a company that offers qualified investment
23 products;

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

27 (8) enter into or continue a salary reduction

1 agreement with an employee if the qualified investment product that
2 is the subject of the salary reduction agreement is not an eligible
3 qualified investment [, including the investment product of a
4 company whose certification has been denied, suspended, or revoked]
5 without first providing the employee with notice in writing that:

6 (A) indicates the reason the subject of the
7 salary reduction agreement is no longer an eligible qualified
8 investment [or why certification has been denied, suspended, or
9 revoked]; and

10 (B) clearly states that by signing the notice the
11 employee is agreeing to enter into or continue the salary reduction
12 agreement.

13 SECTION 1.05. Section 9A, Chapter 22 (S.B. 17), Acts of the
14 57th Legislature, 3rd Called Session, 1962 (Article [6228a-5](#),
15 Vernon's Texas Civil Statutes), is amended to read as follows:

16 Sec. 9A. A person, other than an employee of an educational
17 institution, or an affiliate of the person may not enter into or
18 renew a contract under which the person is to provide services for
19 or administer a plan offered by the institution under Section
20 403(b), Internal Revenue Code of 1986, unless the person:

21 (1) holds a license or certificate of authority issued
22 by the Texas Department of Insurance;

23 (2) is registered as a securities dealer or agent or
24 investment advisor with the State Securities Board; or

25 (3) is a financial institution that:

26 (A) is authorized by state or federal law to
27 exercise fiduciary powers; and

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1 (B) has sufficient presence [~~its main office, a~~
2 ~~branch office, or a trust office~~] in this state to serve the
3 employees of educational institutions who participate in the plan.

4 SECTION 1.06. Section 9B(b), Chapter 22 (S.B. 17), Acts of
5 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
6 Vernon's Texas Civil Statutes), is amended to read as follows:

14 SECTION 1.07. Section 10(a), Chapter 22 (S.B. 17), Acts of
15 the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
16 Vernon's Texas Civil Statutes), is amended to read as follows:

17 (a) A person commits an offense if the person:

18 (1) sells or offers for sale an investment product
19 that is not an eligible qualified investment [~~or that is not~~
20 ~~registered under Section 8A of this Act~~] and that the person knows
21 will be the subject of a salary reduction agreement;

22 (2) violates the licensing requirements of Title 13,
23 Insurance Code, with regard to a qualified investment product that
24 the person knows will be the subject of a salary reduction
25 agreement; or

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1 product that the person knows will be the subject of a salary
2 reduction agreement.

3 SECTION 1.08. Section 11(c), Chapter 22 (S.B. 17), Acts of
4 the 57th Legislature, 3rd Called Session, 1962 (Article [6228a-5](#),
5 Vernon's Texas Civil Statutes), is amended to read as follows:

6 (c) The notice required under this section must be uniform
7 and:

8 (1) be in at least 14-point type;

9 (2) contain spaces for:

10 (A) the name, address, and telephone number of
11 the agent and company offering the annuity contract for sale;

12 (B) the name, address, and telephone number of
13 the company underwriting the annuity;

14 (C) the license number of the person offering to
15 sell the product;

16 (D) the name of the state agency that issued the
17 person's license;

18 (E) the name of the company account
19 representative who has the authority to respond to inquiries or
20 complaints; and

21 (F) with respect to fixed annuity products:

22 (i) the current interest rate or the
23 formula used to calculate the current rate of interest;

24 (ii) the guaranteed rate of interest and
25 the percentage of the premium to which the interest rate applies;

26 (iii) how interest is compounded;

27 (iv) the amount of any up-front, surrender,

1 withdrawal, deferred sales, and market value adjustment charges or
2 any other contract restriction that exceeds 10 years;

3 (v) the time, if any, the annuity is
4 required to be in force before the purchaser is entitled to the full
5 bonus accumulation value;

6 (vi) the manner in which the amount of the
7 guaranteed benefit under the annuity is computed;

8 (vii) whether loans are guaranteed to be
9 available under the annuity;

10 (viii) what restrictions, if any, apply to
11 the availability of money attributable to the value of the annuity
12 once the purchaser is retired or separated from the employment of
13 the employer;

14 (ix) the amount of any other fees, costs, or
15 penalties;

16 (x) whether the annuity guarantees the
17 participant the right to surrender a percentage of the surrender
18 value each year, and the percentage, if any; and

19 (xi) whether the annuity guarantees the
20 interest rate associated with any settlement option; and

21 (3) state, in plain language:

22 (A) that the company offering the annuity must
23 comply with Section 6 [5] of this Act and that the annuity must be a
24 qualified investment product [~~registered under Section 8A of this~~
25 ~~Act~~];

26 (B) [~~that the potential purchaser may contact the~~
27 ~~retirement system or access its Internet website to determine which~~

1 ~~companies are in compliance with Section 5 of this Act and which~~
2 ~~qualified investment products are registered under Section 8A of~~
3 ~~this Act;~~

4 [C] the civil remedies available to the
5 employee;

6 (C) [D] that the employee may purchase any
7 eligible qualified investment through a salary reduction
8 agreement;

9 (D) [E] the name and telephone number of the
10 Texas Department of Insurance division that specializes in consumer
11 protection; and

12 (E) [F] the name and telephone number of the
13 attorney general's division that specializes in consumer
14 protection.

15 SECTION 1.09. Section 12, Chapter 22 (S.B. 17), Acts of the
16 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
17 Vernon's Texas Civil Statutes), is amended to read as follows:

18 Sec. 12. A company that offers an eligible qualified
19 investment that is subject to a salary reduction agreement shall
20 require [demonstrate annually to the retirement system] that each
21 of its representatives are properly licensed and qualified, by
22 training and continuing education, to sell and service the
23 company's eligible qualified investments.

24 SECTION 1.10. The following laws are repealed:

25 (1) Sections 5(b), (c), (d), and (e), Chapter 22 (S.B.
26 17), Acts of the 57th Legislature, 3rd Called Session, 1962
27 (Article 6228a-5, Vernon's Texas Civil Statutes);

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14 (6) Section 11(b), Chapter 22 (S.B. 17), Acts of the
15 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5,
16 Vernon's Texas Civil Statutes); and

ARTICLE 2. CONFORMING CHANGE

21 SECTION 2.01. Section 17.46(b), Business & Commerce Code,
22 as amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967
23 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017,
24 is reenacted and amended to read as follows:

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1 (11) making false or misleading statements of fact
2 concerning the reasons for, existence of, or amount of price
3 reductions;

4 (12) representing that an agreement confers or
5 involves rights, remedies, or obligations which it does not have or
6 involve, or which are prohibited by law;

10 (14) misrepresenting the authority of a salesman,
11 representative or agent to negotiate the final terms of a consumer
12 transaction;

13 (15) basing a charge for the repair of any item in
14 whole or in part on a guaranty or warranty instead of on the value of
15 the actual repairs made or work to be performed on the item without
16 stating separately the charges for the work and the charge for the
17 warranty or guaranty, if any;

18 (16) disconnecting, turning back, or resetting the
19 odometer of any motor vehicle so as to reduce the number of miles
20 indicated on the odometer gauge;

21 (17) advertising of any sale by fraudulently
22 representing that a person is going out of business;

23 (18) advertising, selling, or distributing a card
24 which purports to be a prescription drug identification card issued
25 under Section [4151.152](#), Insurance Code, in accordance with rules
26 adopted by the commissioner of insurance, which offers a discount
27 on the purchase of health care goods or services from a third party

1 provider, and which is not evidence of insurance coverage, unless:

2 (A) the discount is authorized under an agreement
3 between the seller of the card and the provider of those goods and
4 services or the discount or card is offered to members of the
5 seller;

6 (B) the seller does not represent that the card
7 provides insurance coverage of any kind; and

8 (C) the discount is not false, misleading, or
9 deceptive;

10 (19) using or employing a chain referral sales plan in
11 connection with the sale or offer to sell of goods, merchandise, or
12 anything of value, which uses the sales technique, plan,
13 arrangement, or agreement in which the buyer or prospective buyer
14 is offered the opportunity to purchase merchandise or goods and in
15 connection with the purchase receives the seller's promise or
16 representation that the buyer shall have the right to receive
17 compensation or consideration in any form for furnishing to the
18 seller the names of other prospective buyers if receipt of the
19 compensation or consideration is contingent upon the occurrence of
20 an event subsequent to the time the buyer purchases the merchandise
21 or goods;

22 (20) representing that a guaranty or warranty confers
23 or involves rights or remedies which it does not have or involve,
24 provided, however, that nothing in this subchapter shall be
25 construed to expand the implied warranty of merchantability as
26 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
27 2A.216 to involve obligations in excess of those which are

1 appropriate to the goods;

2 (21) promoting a pyramid promotional scheme, as
3 defined by Section [17.461](#);

4 (22) representing that work or services have been
5 performed on, or parts replaced in, goods when the work or services
6 were not performed or the parts replaced;

7 (23) filing suit founded upon a written contractual
8 obligation of and signed by the defendant to pay money arising out
9 of or based on a consumer transaction for goods, services, loans, or
10 extensions of credit intended primarily for personal, family,
11 household, or agricultural use in any county other than in the
12 county in which the defendant resides at the time of the
13 commencement of the action or in the county in which the defendant
14 in fact signed the contract; provided, however, that a violation of
15 this subsection shall not occur where it is shown by the person
16 filing such suit that the person neither knew or had reason to know
17 that the county in which such suit was filed was neither the county
18 in which the defendant resides at the commencement of the suit nor
19 the county in which the defendant in fact signed the contract;

20 (24) failing to disclose information concerning goods
21 or services which was known at the time of the transaction if such
22 failure to disclose such information was intended to induce the
23 consumer into a transaction into which the consumer would not have
24 entered had the information been disclosed;

25 (25) using the term "corporation," "incorporated," or
26 an abbreviation of either of those terms in the name of a business
27 entity that is not incorporated under the laws of this state or

1 another jurisdiction;

2 (26) selling, offering to sell, or illegally promoting
3 an annuity contract under Chapter 22, Acts of the 57th Legislature,
4 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
5 Statutes), with the intent that the annuity contract will be the
6 subject of a salary reduction agreement, as defined by that Act, if
7 the annuity contract is not an eligible qualified investment under
8 that Act [~~or is not registered with the Teacher Retirement System of~~
9 ~~Texas as required by Section 8A of that Act~~];

10 (27) taking advantage of a disaster declared by the
11 governor under Chapter 418, Government Code, by:

12 (A) selling or leasing fuel, food, medicine, or
13 another necessity at an exorbitant or excessive price; or

14 (B) demanding an exorbitant or excessive price in
15 connection with the sale or lease of fuel, food, medicine, or
16 another necessity;

17 (28) using the translation into a foreign language of
18 a title or other word, including "attorney," "immigration
19 consultant," "immigration expert," "lawyer," "licensed," "notary,"
20 and "notary public," in any written or electronic material,
21 including an advertisement, a business card, a letterhead,
22 stationery, a website, or an online video, in reference to a person
23 who is not an attorney in order to imply that the person is
24 authorized to practice law in the United States;

25 (29) delivering or distributing a solicitation in
26 connection with a good or service that:

27 (A) represents that the solicitation is sent on

1 behalf of a governmental entity when it is not; or
2 (B) resembles a governmental notice or form that
3 represents or implies that a criminal penalty may be imposed if the
4 recipient does not remit payment for the good or service;

5 (30) delivering or distributing a solicitation in
6 connection with a good or service that resembles a check or other
7 negotiable instrument or invoice, unless the portion of the
8 solicitation that resembles a check or other negotiable instrument
9 or invoice includes the following notice, clearly and conspicuously
10 printed in at least 18-point type:

11 "SPECIMEN-NON-NEGOTIABLE";

12 (31) in the production, sale, distribution, or
13 promotion of a synthetic substance that produces and is intended to
14 produce an effect when consumed or ingested similar to, or in excess
15 of, the effect of a controlled substance or controlled substance
16 analogue, as those terms are defined by Section [481.002](#), Health and
17 Safety Code:

18 (A) making a deceptive representation or
19 designation about the synthetic substance; or
20 (B) causing confusion or misunderstanding as to
21 the effects the synthetic substance causes when consumed or
22 ingested;

23 (32) a licensed public insurance adjuster directly or
24 indirectly soliciting employment, as defined by Section [38.01](#),
25 Penal Code, for an attorney, or a licensed public insurance
26 adjuster entering into a contract with an insured for the primary
27 purpose of referring the insured to an attorney without the intent

1 to actually perform the services customarily provided by a licensed
2 public insurance adjuster, provided that this subdivision may not
3 be construed to prohibit a licensed public insurance adjuster from
4 recommending a particular attorney to an insured; ~~[or]~~

5 (33) owning, operating, maintaining, or advertising a
6 massage establishment, as defined by Section [455.001](#), Occupations
7 Code, that:

8 (A) is not appropriately licensed under Chapter
9 [455](#), Occupations Code, or is not in compliance with the applicable
10 licensing and other requirements of that chapter; or

11 (B) is not in compliance with an applicable local
12 ordinance relating to the licensing or regulation of massage
13 establishments; or

14 (34) ~~(33)~~ a warrant or of a vehicle protection
15 product warranty using, in connection with the product, a name that
16 includes "casualty," "surety," "insurance," "mutual," or any other
17 word descriptive of an insurance business, including property or
18 casualty insurance, or a surety business.

19 ARTICLE 3. TRANSITIONS; CONFLICT WITH OTHER LEGISLATION; EFFECTIVE
20 DATE

21 SECTION 3.01. The changes in law made by this Act to Chapter
22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session,
23 1962 (Article [6228a-5](#), Vernon's Texas Civil Statutes), apply only
24 to an offer of a qualified investment product under that Act that is
25 made on or after the effective date of this Act. An offer of a
26 qualified investment product that is made before the effective date
27 of this Act is governed by the law as it existed immediately before

1 the effective date of this Act, and that law is continued in effect
2 for that purpose.

3 SECTION 3.02. The change in law made by this Act to Section
4 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd
5 Called Session, 1962 (Article [6228a-5](#), Vernon's Texas Civil
6 Statutes), applies only to an offense committed on or after the
7 effective date of this Act. For purposes of this section, an
8 offense is committed before the effective date of this Act if any
9 element of the offense occurs before that date. An offense
10 committed before the effective date of this Act is governed by the
11 law in effect when the offense was committed, and the former law is
12 continued in effect for that purpose.

13 SECTION 3.03. Section [17.46](#)(b), Business & Commerce Code,
14 as amended by this Act, applies only to a cause of action that
15 accrues on or after the effective date of this Act. A cause of
16 action that accrues before the effective date of this Act is
17 governed by the law as it existed immediately before the effective
18 date of this Act, and that law is continued in effect for that
19 purpose.

20 SECTION 3.04. To the extent of any conflict, this Act
21 prevails over another Act of the 86th Legislature, Regular Session,
22 2019, relating to nonsubstantive additions to and corrections in
23 enacted codes.

24 SECTION 3.05. This Act takes effect September 1, 2019.