

HOUSE COMMITTEE AMENDMENTS

Amendments proposed by House Committee on Labor and Industrial Relations to Original House Bill No. 411 by Representative Wooton

AMENDMENT NO. 1

On page 1, line 2, after "(B)" and before "and" insert "and R.S. 51:712(E)"

AMENDMENT NO. 2

On page 1, at the end of line 6, add "and R.S. 51:712(F),"

AMENDMENT NO. 3

On page 1, line 9, after "employment;" and before "to" insert "to provide relative to mutual funds controlled by foreign law;"

AMENDMENT NO. 4

On page 16, between lines 13 and 14, insert the following:

"Section 5. R.S. 51:712(E) is hereby amended and reenacted and R.S. 51:712(F) is hereby enacted to read as follows:

§712. Unlawful practices

\* \* \*

E. For any rule, regulation, or order promulgated or issued by the commissioner under this Part:

(1) If a mutual fund, when offered, sold, or purchased in this state is subject to, bound by, or otherwise controlled by a foreign law, in which any part of that foreign law, relevant to the security or not, would violate an existing state or federal law if applied in this state, each provision, rule, regulation, or procedure of that foreign law that would violate an existing state or federal law if applied in this state is a material fact which must be disclosed in order to make the statements clear in the light of the circumstances under which they were made.

(2) Failure to disclose a material fact as set forth in Paragraph (1) of this Subsection shall constitute fraud or deceit.

(3) The provisions of this Subsection shall not be construed to limit the scope of Subsections A through D of this Section.

E. (1) For purposes of this Subsection, the following terms shall have the meanings set forth below:

(a) "Allocated share" shall mean any plan security held by a trustee, beneficially or of record, that is allocated to the account of a participant.

(b) "Foreign law" shall mean any law or administrative rule, regulation, or accepted and binding custom given legal effect in any jurisdiction outside of the United States and its territories, or any religious or tribal law, edict, or code.

(c) "Investment plan" shall mean any plan, trust or similar arrangement that invests in securities and that satisfies each of the following requirements:

(i) At least ten percent of the total number of participants are residents of or domiciled in this state.

(ii) The trustee or a majority of the trustees are residents of or domiciled in this state.

~~(e)~~ (d) "Issuing corporation" shall mean the issuer of a particular plan security.

~~(d)~~ (e) "Participants" shall mean all persons who have accounts in an investment plan.

~~(e)~~ (f) "Plan documents" shall mean the documents and other instruments pursuant to which an investment plan is established and governed.

~~(f)~~ (g) "Plan security" shall mean any security that is held beneficially or of record by a trustee, whether such security is at the time an allocated share, unallocated share or uninstructed share.

~~(g)~~ (h) "Trustee" shall mean the natural person, natural persons, entity or entities named as trustee or trustees under the terms of an investment plan, in the capacity as such.

~~(h)~~ (i) "Unallocated share" shall mean any plan security held by a trustee, beneficially or of record, that is not allocated to the account of a participant.

~~(i)~~ (j) "Uninstructed share" shall mean any allocated share as to which the trustee has not received, from the participant to whose account such share is allocated, instructions as to how to vote such allocated share in a matter properly submitted to the vote of the shareholders of the issuing corporation.

(2) If, with respect to any investment plan:  
(a) The plan documents provide that participants have the right to direct in a confidential manner:

(i) Whether any plan securities will be tendered in response to a tender or exchange offer for such plan securities.

(ii) How any plan securities shall be voted on any particular matter to come before a vote of shareholders of the issuing corporation; and

(b) A valid tender or exchange offer has been made for plan securities or a matter has come before the vote of the shareholders of an issuing corporation relating, directly or indirectly, to the possible offer or sale of plan securities, whether pursuant to:

(i) A merger or consolidation of the issuing corporation with or into any other person.

(ii) The sale of all or substantially all of the assets of the issuing corporation.

(iii) The liquidation or dissolution of the issuing corporation.

(iv) A contested election of directors of the issuing corporation.

(v) The removal or adoption of any defensive devices by the issuing corporation, or otherwise, then, it shall be unlawful for the trustee not to permit participants to tender or direct the voting of the plan securities in the manner set forth in the plan documents, and the trustee shall have no authority or discretion whatsoever to tender or vote, as the case may be, any plan securities in any manner inconsistent with or contrary to the specific instructions of the participants relating to such plan securities.

AMENDMENT NO. 5

On page 16, line 14, change "Section 5" to "Section 6"