

GOVERNMENT CODE
TITLE 12. SECURITIES ACT
CHAPTER 4001. GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE; PURPOSES; CONSTRUCTION

Sec. 4001.001. SHORT TITLE. This title may be cited as The Securities Act.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.002. PURPOSES; CONSTRUCTION. (a) The general purposes of this title are to:

(1) protect investors and, consistent with that purpose, encourage capital formation, job formation, and free and competitive securities markets;

(2) maximize coordination with federal and other states' laws and administration, particularly with respect to procedure, reports, forms, and exemptions; and

(3) minimize regulatory burdens on issuers and other persons subject to this title, especially small businesses.

(b) This title may be construed and implemented to effectuate the title's general purposes.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.003. SEVERABILITY. The provisions of this title are severable. If any provision of this title is declared void or unconstitutional, the remaining provisions of this title would have been enacted notwithstanding such judicial determination of the invalidity of the provision, and the remaining provisions shall remain in effect.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. DEFINITIONS

Sec. 4001.051. APPLICABILITY OF DEFINITIONS; CONSTRUCTION OF CERTAIN CONJUNCTIONS. (a) The definition for a term provided by this chapter applies in this title unless the context in which the term is used indicates a different meaning.

(b) The term "and" may be construed to mean "or," and the term "or" may be construed to mean "and."

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.052. AGENT. (a) Except as provided by Subsection (b), "agent" includes a person or company employed, appointed, or authorized by a dealer to sell, offer for sale or delivery, solicit subscriptions to or orders for, or deal in any other manner in, securities in this state directly or through a subagent.

(b) If a corporation or partnership is registered as a dealer under this title, an officer of the corporation or partner of the partnership is not deemed an agent solely because of the officer's or partner's status as an officer or partner of that entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.053. BOARD. "Board" means the State Securities Board.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.054. BROKER. "Broker" means "dealer" as defined in this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.055. COMMISSIONER. "Commissioner" means the securities commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.056. DEALER. (a) "Dealer" includes:

(1) a person or company, other than an agent, who for all or part of the person's or company's time engages in this state, directly or through an agent, in selling, offering for sale or delivery, soliciting subscriptions to or orders for, undertaking to dispose of, or inviting offers for any security; and

(2) a person or company who deals in any other manner in any security in this state.

(b) Except as provided by Subsection (c), an issuer, other than a registered dealer, who directly or through any person or company, other than a registered dealer, offers for sale, sells, or makes sales of the issuer's own securities is deemed a dealer and shall comply with this title.

(c) An issuer is not deemed a dealer under Subsection (b) if:

(1) the issuer sells or offers for sale securities to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; or

(2) the transaction is exempt as provided by Subchapter [A](#), Chapter [4005](#).

(d) Except as expressly provided otherwise in this title, a person or company engaged in the sale of, offer for sale of, solicitation of, subscription to, dealing in, or delivery of a security made in a transaction or under a condition specified in Subchapter [A](#), Chapter [4005](#), is not deemed a dealer within the meaning of this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.057. FEDERAL COVERED INVESTMENT ADVISER. "Federal covered investment adviser" means an investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.058. FRAUD; FRAUDULENT PRACTICE. (a) "Fraud" and "fraudulent practice" include:

(1) a misrepresentation of a relevant fact made in any manner;

(2) a promise, representation, or predication as to the future not made honestly and in good faith;

(3) an intentional failure to disclose a material fact;

(4) a direct or indirect gain, through the sale of a security, of an underwriting or promotion fee or profit, or of a selling or managing commission or profit, that is so gross or exorbitant as to be unconscionable; and

(5) a scheme, device, or other artifice to obtain a profit, fee, or commission described by Subdivision (4).

(b) Nothing in this section limits the full meaning of "fraud," "fraudulent," or "fraudulent practice" as applied or accepted in courts.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.059. INVESTMENT ADVISER. "Investment adviser" includes a person who, for compensation, engages in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities, as may be further defined by board rule. The term does not include:

(1) a bank or a bank holding company, as defined by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), that is not an investment company;

(2) a lawyer, accountant, engineer, teacher, or geologist whose performance of the services is solely incidental to the practice of the person's profession;

(3) a dealer or agent who receives no special compensation for those services and whose performance of those services is solely incidental to transacting business as a dealer

or agent;

(4) the publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

(5) a person whose advice, analyses, or report does not concern a security other than a security that is:

(A) a direct obligation of or an obligation the principal or interest of which is guaranteed by the United States government; or

(B) issued or guaranteed by a corporation in which the United States has a direct or indirect interest and designated by the United States Secretary of the Treasury under Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(12)), as an exempt security for purposes of that Act.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.060. INVESTMENT ADVISER REPRESENTATIVE.

(a) Except as provided by Subsection (b), "investment adviser representative" includes a person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who provides investment advice, directly or through subagents, as defined by board rule, to an investment adviser's clients on behalf of the investment adviser.

(b) "Investment adviser representative" does not include a partner of a partnership or officer of a corporation or other entity that is registered as an investment adviser under this title solely because of the person's status as a partner or officer of that entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.061. ISSUER. "Issuer" means and includes a person or company who has issued, proposes to issue, or issues any security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.062. MORTGAGE. "Mortgage" includes a deed of trust to secure a debt.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.063. NO PAR VALUE; PAR VALUE. (a) "No par value" as applied to shares of stock or other securities means the securities are without a given or specified par value.

(b) For purposes of classifying or computing the par value of shares of stock or other securities of no par value, the amount for which the securities are sold or offered for sale to the public is used as a basis.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.064. PERSON; COMPANY. (a) The terms "person" and "company" include:

(1) any of the following formed under the laws of this or another state, country, sovereignty, or political subdivision of a state, country, or sovereignty, and regardless of whether incorporated or unincorporated:

- (A) a corporation;
- (B) a person;
- (C) a company, including a joint stock company;
- (D) a partnership, including a limited partnership;
- (E) an association;
- (F) a firm;
- (G) a syndicate; or
- (H) a trust; and

(2) a government or a political subdivision or agency of a government.

(b) As used in Subsection (a), "trust":

- (1) is deemed to include a common law trust; and

(2) does not include a trust created or appointed under or by virtue of a last will and testament or by a court.

(c) The definition of "person" assigned by Section 311.005 does not apply to any provision in this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.065. REGISTERED DEALER. "Registered dealer" means a dealer the commissioner has registered under Sections 4004.054 and 4004.055, or Section 4004.056.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.066. REGISTERED INVESTMENT ADVISER. "Registered investment adviser" means an investment adviser to whom the commissioner has issued a registration certificate under Sections 4004.054 and 4004.055, or Section 4004.056.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.067. SALE; OFFER FOR SALE; SELL. (a) "Sale," "offer for sale," and "sell" include every disposition or attempted disposition of a security for value.

(b) "Sale" means and includes:

(1) a contract or agreement in which a security is sold, traded, or exchanged for money, property, or another thing of value; or

(2) a transfer of or agreement to transfer a security, in trust or otherwise.

(c) "Sale" or "offer for sale" includes a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in any manner in the United States mail within this state of a circular, letter, or other advertising matter.

(d) "Sell" means any act by which a sale is made.

(e) A security given or delivered with or as a bonus on

account of a purchase of securities or other thing of value is conclusively presumed to:

(1) constitute a part of the subject of the purchase;
and

(2) have been sold for value.

(f) The sale of a security under conditions that entitle the purchaser or subsequent holder to exchange the security for another security or to purchase another security is not deemed a sale or offer for sale of the other security.

(g) This section does not limit the meaning of the terms "sale," "offer for sale," or "sell" as used by or accepted in courts.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.068. SECURITY. (a) The term "security":

(1) includes:

(A) a limited partner interest in a limited partnership;

(B) a share;

(C) a stock;

(D) a treasury stock;

(E) a stock certificate under a voting trust agreement;

(F) a collateral trust certificate;

(G) an equipment trust certificate;

(H) a preorganization certificate or receipt;

(I) a subscription or reorganization certificate;

(J) a note, bond, debenture, mortgage certificate, or other evidence of indebtedness;

(K) any form of commercial paper;

(L) a certificate in or under a profit sharing or participation agreement;

(M) a certificate or instrument representing an interest in or under an oil, gas, or mining lease, fee, or title;

(N) a certificate or instrument representing or

secured by an interest in any of the capital, property, assets, profits, or earnings of a company;

(O) an investment contract; and

(P) any other instrument commonly known as a security, regardless of whether the instrument is similar to another instrument listed in this subsection; and

(2) applies regardless of whether the security is evidenced by a written instrument.

(b) "Security" does not include an insurance policy, endowment policy, annuity contract, or optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been filed with the department as required by law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. GENERAL ADMINISTRATIVE PROVISIONS

Sec. 4001.101. SUFFICIENCY OF NOTICE. In this title unless otherwise specified, a notice required by this title is sufficient if sent by registered or certified mail addressed to a person at:

(1) the address designated in any filing the person submitted to the commissioner; or

(2) the person's last known address.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.102. CONSENT FOR SERVICE OF PROCESS. (a) This section applies only to an issuer, dealer, or investment adviser that is:

(1) organized under the laws of any other state, territory, or government; or

(2) domiciled in any other state.

(b) Unless a board rule specifies otherwise, an issuer, dealer, or investment adviser subject to this section must include

in an application filed with or notice filing submitted to the commissioner a provision that appoints the commissioner as the attorney of the issuer, dealer, or investment adviser who may be served with process in any action or proceeding against the issuer, dealer, or investment adviser that arises out of any transaction subject to this title.

(c) The provision required by Subsection (b) must be executed by an authorized agent of the issuer, dealer, or investment adviser filing the application or submitting the notice filing.

(d) Service of process on the commissioner in accordance with a provision executed under this section has the same effect as if the issuer, dealer, or investment adviser was created or formed under the laws of this state and served with process in this state.

(e) If the commissioner is served with process in accordance with a provision executed under this section, the commissioner shall forward the process by United States mail to the last known address of the issuer, dealer, or investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER D. OTHER GENERAL PROVISIONS

Sec. 4001.151. PROSECUTION UNDER CERTAIN OTHER LAW. Nothing in Chapter 269 (S.B. 294), Acts of the 55th Legislature, Regular Session, 1957 (Article 581-1 et seq., Vernon's Texas Civil Statutes), limits the liability of a person or company, or of its officers or agents, imposed by law as of August 22, 1957, so as to prevent the prosecution of the person or company, or of its officers or agents, for violating another statute.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.152. GOOD FAITH. (a) A provision of this title that imposes liability or a penalty does not apply to an act or omission made in good faith in conformity with a board rule.

(b) This section applies regardless of whether the rule is

subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.153. BURDEN OF PROOF ON EXEMPTION. (a) A complaint, information or indictment, or a writ or proceeding brought under this title is not required to negate an exemption under this title.

(b) A party claiming an exemption under this title has the burden of proof on the exemption.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.154. CERTIFIED COPIES OF CERTAIN DOCUMENTS OR INSTRUMENTS AS EVIDENCE. (a) Except as provided by Subsection (b), a copy of a paper, document, or instrument filed in the office of the commissioner and certified by the commissioner must be admitted in evidence in a court and elsewhere in this state in any case in which the original would be admitted in evidence.

(b) In any proceeding in a court, the court may, on cause shown, require the production of the original paper, document, or instrument.

(c) In a prosecution, suit, or other action or proceeding in a court of this state that arises under this title, a certificate showing compliance or noncompliance with a provision of this title by a dealer, agent, investment adviser, or investment adviser representative constitutes prima facie evidence of the person's compliance or noncompliance with that provision if the certificate:

(1) is under the state seal; and

(2) is signed by the commissioner.

(d) A certificate described by Subsection (c) is admissible in evidence in an action to enforce this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.155. PROOF OF CERTAIN RECORDS. All records of

the former securities divisions of the offices of the secretary of state and the former Board of Insurance Commissioners for which custody was assumed by the commissioner under Chapter 269, Acts of the 55th Legislature, Regular Session, 1957, shall be proven under the commissioner's certificate.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.