

GOVERNMENT CODE

TITLE 12. SECURITIES ACT

CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4002.001. APPLICABILITY OF OTHER LAW. The board and commissioner are subject to Chapters [551](#), [2001](#), and [2002](#). Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.002. SUNSET PROVISION. The State Securities Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this title expires September 1, 2031. Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. [3607](#)), Sec. 9.101, eff. January 1, 2022.

SUBCHAPTER B. STATE SECURITIES BOARD

Sec. 4002.051. APPOINTMENT OF BOARD. (a) The State Securities Board consists of five citizens of this state appointed by the governor with the advice and consent of the senate.

(b) Members of the board must be members of the general public.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) A member of the board is eligible for reappointment. Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.052. MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment to the board if the person or the person's

spouse:

(1) is registered as a dealer, agent, investment adviser, or investment adviser representative;

(2) has an active notice filing under this title to engage in business in this state as an investment adviser or investment adviser representative;

(3) is employed by or participates in the management of a business entity engaged in business as a securities dealer or investment adviser; or

(4) has, other than as a consumer, a financial interest in a business entity engaged in business as a securities dealer or investment adviser.

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

Sec. 4002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board or an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the board; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the board.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter [305](#) because of the person's activities for compensation on behalf of a profession related to the operation

of the board.

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

Sec. 4002.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year.

(b) The governor shall fill a vacancy on the board for the unexpired term.

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

Sec. 4002.055. PRESIDING OFFICER. The governor shall designate a member of the board as the board's presiding officer to serve in that capacity at the will of the governor.

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

Sec. 4002.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section [4002.051](#);

(2) does not maintain during service on the board the qualifications required by Section [4002.051](#);

(3) is ineligible for membership under Section [4002.052](#) or [4002.053](#);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the board's presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the board's next highest ranking officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

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

Sec. 4002.057. PER DIEM. A member of the board is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the board.

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

Sec. 4002.058. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the law governing board operations;
- (2) the programs, functions, rules, and budget of the board;
- (3) the scope of and limitations on the rulemaking authority of the board;
- (4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The commissioner shall create a training manual that includes the information required by Subsection (b). The commissioner shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the commissioner a statement acknowledging that the member received and has reviewed the training manual.

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. [3607](#)), Sec. 9.102, eff. January 1, 2022.

#### SUBCHAPTER C. SECURITIES COMMISSIONER AND EMPLOYEES OF BOARD

Sec. 4002.101. SECURITIES COMMISSIONER. The board shall

appoint a securities commissioner who serves at the pleasure of the board and who, under the board's supervision, shall administer this title.

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

Sec. 4002.102. DEPUTY SECURITIES COMMISSIONER; SECURITIES COMMISSIONER APPOINTEES. (a) The commissioner, with the consent of the board, may designate a deputy securities commissioner who shall perform all of the duties of the commissioner required by law to be performed by the commissioner when the commissioner is absent or unable to act for any reason.

(b) The commissioner shall appoint other persons as necessary to carry out the powers and duties of the commissioner under this title and under other laws granting jurisdiction to or applicable to the board or the commissioner.

(c) The commissioner may delegate to a person appointed under Subsection (b) powers and duties of the commissioner as the commissioner considers necessary.

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

Sec. 4002.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner and board employees.

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

Sec. 4002.104. STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

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

eff. January 1, 2022.

Sec. 4002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position at least 10 days before the date of any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

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

Sec. 4002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter [21](#), Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

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

Sec. 4002.107. WRITTEN EMPLOYEE COMPLAINT PROCEDURE.

(a) The commissioner or the commissioner's designee shall maintain a system to promptly and efficiently act on complaints filed with the commissioner or board concerning an employee or former employee. The commissioner or the commissioner's designee shall maintain the information listed in Section [4007.051](#) for files maintained under that section for complaints against persons registered under this title.

(b) The commissioner or the commissioner's designee shall make information available describing the board's procedures for complaint investigation and resolution.

(c) The commissioner or the commissioner's designee shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation.

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. [3607](#)), Sec. 9.103, eff. January 1, 2022.

SUBCHAPTER D. POWERS AND DUTIES OF BOARD AND COMMISSIONER

Sec. 4002.151. RULES. (a) Subject to Subsection (b), the board may adopt rules as necessary to implement this title, including rules:

(1) governing registration statements, applications, notices, and reports; and

(2) defining terms, regardless of whether used in this title, provided that the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this title.

(b) The board may not adopt a rule unless, after notice and opportunity for comment, the board finds that the action is:

(1) necessary or appropriate in the public interest or for the protection of investors; and

(2) consistent with the purposes fairly intended by



the policy and provisions of this title.

(c) For the purpose of adopting rules, the board may classify securities, persons, and matters within the board's jurisdiction and prescribe different requirements for different classes.

(d) The board, in the board's discretion, may waive a requirement of a rule in a situation in which, in the board's opinion, the requirement is not necessary in the public interest or for the protection of investors.

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

Sec. 4002.152. RULES REGARDING COMPETITIVE BIDDING OR ADVERTISING. (a) The board may not adopt rules restricting competitive bidding or advertising by a person registered under this title except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in the board's rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(c) This section does not affect limitations on advertising in Section [4005.012](#), [4005.013](#), or [4005.021](#) or in rules adopted by the board under Section [4005.024](#).

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

Sec. 4002.153. BOARD DELEGATION OF RULEMAKING AUTHORITY.

(a) The board by rule may delegate to the commissioner or the deputy securities commissioner the authority granted to the board

under Section 4002.151 or 4002.152 to adopt rules or to waive the requirements of rules as the board considers appropriate.

(b) Any rule adopted by the commissioner or the deputy securities commissioner based on the authority delegated under this section must be adopted in accordance with Sections 4002.151 and 4002.152.

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

Sec. 4002.1535. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.104, eff. January 1, 2022.

Sec. 4002.154. COMMISSIONER DISCRETION REGARDING RULES. In applying the standards of this title, the commissioner may waive or relax any restriction or requirement in a board rule that, in the commissioner's opinion, is unnecessary for the protection of investors in a particular case.

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

Sec. 4002.155. DEPOSIT OF RECEIPTS TO GENERAL REVENUE FUND. The commissioner or board shall deposit money received from assessments or charges under this title to the credit of the general revenue fund.

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

Sec. 4002.156. BOARD AUTHORITY TO EXERCISE COMMISSIONER'S POWERS. The board may exercise any power or perform any act the commissioner is authorized to exercise or perform under this title. Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. [4171](#)), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.157. LIST OF SECURITIES OFFERED. At any time, the commissioner may, in the exercise of reasonable discretion under this title, require a dealer to file with the commissioner a partial or complete list of securities that the dealer:

(1) is offering or advertising for sale in this state at the time of the request; or

(2) has offered or advertised for sale in this state during the six-month period preceding the date of the request.

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

Sec. 4002.158. RECORD OF PROCEEDINGS. A complete record shall be kept of all proceedings held before the commissioner on any hearing or investigation.

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

Sec. 4002.159. RECORD OF CERTAIN FILINGS AND ORDERS. (a) The commissioner shall maintain a record of:

(1) the names and addresses of all registered dealers, registered agents, registered investment advisers, registered

investment adviser representatives, and persons who have submitted a notice filing under this title; and

(2) all orders of the commissioner denying, suspending, or revoking a registration.

(b) A record maintained under Subsection (a) must be open for public inspection.

(c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law.

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

Sec. 4002.160. COMMISSIONER'S ACCESS TO RECORDS AND REPORTS OF OTHER STATE AGENCIES. (a) During an investigation for the purpose of enforcing this title or in connection with the application of a person or company for registration or for a permit qualifying securities for sale, the commissioner or deputy securities commissioner shall have free access to all records of, all reports of, and all reports made to an agency or department of this state.

(b) If the commissioner or deputy securities commissioner discloses any information made confidential by law, the affected person or company has a right of action on the official bond of the commissioner or deputy securities commissioner for the person's or company's injuries in a suit brought in the name of the state at the relation of the person or company.

(c) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

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

Sec. 4002.161. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) To the extent not otherwise provided by this title, any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations are confidential.

(b) Except as provided by Subsection (c) or Section

[4007.056](#)(b) or (c), the commissioner may not disclose a document or other information made confidential by Subsection (a) unless the disclosure is made to the public under court order for good cause shown.

(c) The commissioner, at the commissioner's discretion, may disclose confidential information in the commissioner's possession to:

(1) a governmental or regulatory authority or any association of governmental or regulatory authorities approved by board rule; or

(2) any receiver appointed under Section [4007.151](#).

(d) Disclosure of information under Subsection (c) does not violate any other provision of this title or Chapter [552](#).

(e) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

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

Sec. 4002.162. BOARD ACCESS TO OFFICES AND RECORDS. Each member of the board shall have access to all of the offices and records under the commissioner's supervision.

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

Sec. 4002.163. ANNUAL REPORT. On or before January 1 of each year, the board, with the advice of the commissioner, shall report to the governor and the presiding officer of each house of the legislature about the administration of this title and plans and needs for future securities regulation. The report must include:

(1) a detailed accounting of all funds received and disbursed by the board during the preceding year, including the amount spent by the board assisting in the criminal prosecution of cases under Section [4007.001](#)(e); and

(2) with respect to cases referred during the preceding year by the board under Section [4007.001](#)(c), a breakdown by county and district attorney of the number of cases where:

- (A) criminal charges were filed;
- (B) prosecution is ongoing; or
- (C) prosecution was completed.

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. [3607](#)), Sec. 9.105, eff. January 1, 2022.

## SUBCHAPTER E. CONSUMER INTEREST AND OTHER PUBLIC INTEREST INFORMATION

Sec. 4002.201. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing:

(1) the regulatory functions of the board and commissioner; and

(2) the procedures by which consumer complaints are filed with and resolved by the board or commissioner.

(b) The board shall make the information available to the public and appropriate state agencies.

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

Sec. 4002.202. PUBLIC PARTICIPATION. The board by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

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

Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED WITH COMMISSIONER; PUBLIC RECORDS. (a) All information, papers, documents, instruments, and affidavits required by this title to be filed with the commissioner are public records.

(b) All information, papers, documents, instruments, and affidavits required by this title to be filed with the commissioner must be open to inspection and examination by a purchaser or

prospective purchaser of securities, or by the agent or representative of a purchaser or prospective purchaser of securities. The commissioner shall:

(1) provide to a purchaser or prospective purchaser of securities, or an agent or representative of those persons, any information required to be filed with the commissioner under this title; and

(2) on request by a person described by Subdivision (1), provide a certified copy of any paper, document, instrument, or affidavit filed with the commissioner under this title.

(c) This section does not apply to information made confidential by Section [4002.161](#), [4007.052](#), or [4007.056](#) or other law.

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